

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 KERRY ASHDOWN,

Plaintiff,

4 -against-

Case No.

5 13 CV 1374 (HB) (GWG)

6 EQUINOX a/k/a EQUINOX FITNESS CLUB and incorporated  
7 as EQUINOX HOLDINGS, INC., JOE MATARAZZO a/k/a  
8 JOSEPH MATARAZZO, MAURO MAIETTA, LAWRENCE SANDERS,  
MATT PLOTKIN a/k/a MATTHEW PLOTKIN, AND MATT HERBERT  
a/k/a MATTHEW HERBERT,

Defendants.

11 DEPOSITION OF

12 MAURO MAIETTA

13 NEW YORK, NEW YORK

14 SEPTEMBER 10, 2013

15  
16  
17  
18  
19 ATKINSON-BAKER, INC.  
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Defendants.

9 -----x  
10 September 10, 2013

11 10:04 a.m.

12  
13 Deposition of MAURO MAIETTA, held at The Harman  
14 Firm, PC, 200 West 57th Street, New York, New York,  
15 before Renate Reid, Registered Professional Reporter  
16 and Notary Public of the State of New York.

1 A P P E A R A N C E S:

2  
3 THE HARMAN FIRM, PC

4 Attorneys for Plaintiff

5 200 West 57th Street

6 Suite 900

7 New York, N.Y. 10019

8 BY: WALKER G. HARMAN, JR., Esq.

9  
10  
11 LAROCCA HORNIK ROSEN GREENBERG & BLAHA, LLP

12 Attorneys for Defendants

13 40 Wall Street, 32nd Floor

14 New York, N.Y. 10005

15 BY: PATRICK T. MCPARTLAND, Esq.

1                   IT IS HEREBY STIPULATED AND AGREED, by and  
2                   between counsel for the respective parties  
3                   hereto, that the filing, sealing and certification of  
4                   the within deposition shall be and the same are  
5                   hereby waived;

6                   IT IS FURTHER STIPULATED AND AGREED that  
7                   all objections, except as to the form of the  
8                   question, shall be reserved to the time of the trial;

9                   IT IS FURTHER STIPULATED AND AGREED that  
10                  the within deposition may be signed before any Notary  
11                  Public with the same force and effect as if signed  
12                  and sworn to before the Court.

1 M A U R O M A I E T T A, called as a witness,  
2 having been first duly sworn by the Notary Public, was  
3 examined and testified as follows:  
4

5 EXAMINATION BY

6 BY MR. HARMAN:

7 Q. Good morning.

8 A. Good morning.

9 Q. Could you please state your name and  
10 address for the record?

11 A. Mauro Maietta,   
12 

13 Q. And have you ever gone by any other  
14 name?

15 A. No.

16 Q. How long have you lived at that  
17 address?

18 A. Since February of 2013.

19 Q. And is Mauro Maietta your full legal  
20 name?

21 A. Yes. My middle name is Salvatore.

22 Q. Have you ever been deposed before?

23 A. No, I have not.

24 Q. Have you ever been a party to a lawsuit  
25 before?

1 A. No.

2 Q. And just to be clear, you've never sued  
3 anyone?

4 A. No.

5 Q. And no one has ever sued you?

6 A. No.

7 Q. All right. Let me go over a few of the  
8 ground rules because you've never been deposed  
9 before. My name is Walker Harman. I'm a lawyer.  
10 I represent Kerry Ashdown in a lawsuit that she  
11 brought against Equinox and others in their  
12 individual capacity.

13 Do you understand that?

14 A. Yes.

15 Q. And do you understand that you have  
16 been named as an individual defendant in Kerry  
17 Ashdown's lawsuit?

18 A. Yes.

19 Q. I'm going to ask you a series of  
20 questions today concerning Ms. Ashdown's lawsuit.  
21 If you don't understand a question I ask you,  
22 please ask me to repeat it or rephrase it, I'll  
23 endeavor to do either or both. In other words, if  
24 you answer the question, the transcript is going  
25 to read as you understood the question. So make

1           sure that you understand what I'm saying. I want  
2           you to understand what I'm saying.

3                     Do you understand that?

4                     A. Thank you. Yes.

5                     Q. During the deposition today, you can  
6           take a break at any time. I'm not sure how long  
7           we're going to go today. We could go into the  
8           afternoon. We'll certainly take a lunch break and  
9           other short breaks throughout the day.

10                    Let me know if you need to take a break,  
11           use the bathroom, to get some water or whatever.  
12           The only request I have of you is that you answer  
13           any pending question. So if I've asked a  
14           question, you need to provide an answer before you  
15           take a break.

16                    Do you understand that?

17                    A. Yes.

18                    Q. Are you aware that you're under oath  
19           today?

20                    A. Yes.

21                    Q. And that failing to tell the truth  
22           under oath is a crime called perjury?

23                    A. Yes.

24                    Q. You're under the same oath as if you  
25           were appearing in court.

1 Do you understand that?

2 A. Yes.

3 Q. While your deposition is ongoing, I'm  
4 going to ask you not to talk about your testimony  
5 with anyone.

6 Do you understand that?

7 A. Yes.

8 Q. I don't think we're going to have a  
9 problem, but you also need to verbalize your  
10 answers to any questions. So a gesture, the  
11 nodding of the head, or some other physical  
12 response can't always be taken down by the court  
13 reporter. So I would ask you to just verbalize  
14 your answers to any questions.

15 Do you understand that?

16 A. Yes.

17 Q. Along those same lines -- and it's a  
18 two-way street -- we need to try not to interrupt  
19 one another. So let me finish my question, you  
20 can then provide a response. There might be  
21 occasions where your lawyer may object or make an  
22 instruction and you can answer, so let's try not  
23 to cut one another off because it makes it  
24 difficult for the court reporter.

25 Do you understand that?



1 A. Yes.

2 Q. The questions I'm going to ask you are  
3 routine questions I would ask anyone at a  
4 deposition.

5 Can I have your date of birth?

6 A. August 31, [REDACTED]

7 Q. And have you had any alcohol in the  
8 last 24 hours?

9 A. No.

10 Q. Have you taken any medications in the  
11 last 24 hours?

12 A. Just Advil yesterday.

13 Q. Have you been prescribed any  
14 medications that you were not taking?

15 A. No.

16 Q. And are you currently employed?

17 A. Yes.

18 Q. Where?

19 A. Equinox Fitness. I work at the Soho  
20 location.

21 Q. What is your job title?

22 A. Personal training manager.

23 Q. How long have you held that title?

24 A. Since 2011, I believe, September.

25 Q. Can you think of any reason why you

1           couldn't provide your best and truthful answers  
2           here today during the deposition?

3                     A. Can you say that again, please?

4                     Q. Can you think of any reason why you  
5           could not provide your best and most truthful  
6           answers here today?

7                     A. No.

8                     Q. Has anyone told you to provide  
9           dishonest answers today?

10                    A. No.

11                    Q. Have you ever been arrested?

12                    A. No.

13                    Q. Have you ever been accused of a crime?

14                    A. No.

15                    Q. Have you ever been accused of lying?

16                    A. No.

17                    Q. Have you ever been accused of a  
18           dishonest act?

19                    A. No.

20                    Q. Have you ever been terminated from a  
21           job?

22                    A. No.

23                    Q. What, if anything, did you do to  
24           prepare for today's deposition?

25                    A. Met with this gentleman on the right.

1 MR. MCPARTLAND: To put it on the  
2 record, there's an attorney-client  
3 privilege, so don't disclose the nature of  
4 any communications. I don't think that  
5 Mr. Harman is going to ask any questions  
6 like that, but just so that you're aware of  
7 that.

8 THE WITNESS: Okay. Thank you.

9 Q. Certainly. So the record is crystal  
10 clear, I am not going to ask you about the content  
11 of your communications with Mr. McPartland or any  
12 other lawyer you've spoken to regarding this  
13 matter.

14 Are you represented by counsel in this  
15 case?

16 A. Yes.

17 Q. Who is your counsel?

18 A. The gentleman to my right.

19 Q. What is his name?

20 A. Can't remember his last name off the  
21 top of my head, but I know his first name is Pat,  
22 so I've been calling him Pat.

23 Q. How long has he been your lawyer?

24 A. I believe, June of this year.

25 Q. And are you compensating your lawyer

1 for his time?

2 MR. MCPARTLAND: Objection.

3 You can answer.

4 A. No.

5 Q. And did you sign a retainer agreement  
6 to retain your lawyer?

7 A. I don't believe so.

8 Q. And other than Pat, are you represented  
9 by any other lawyer?

10 A. No.

11 MR. MCPARTLAND: By counsel, he's  
12 represented by our law firm. There are  
13 other lawyers at our firm, so I'll clarify  
14 that.

15 MR. HARMAN: I would ask you not to  
16 make speaking objections, please.

17 MR. MCPARTLAND: That was just a  
18 statement for the record.

19 MR. HARMAN: I'm seeking the witness's  
20 understanding; not counsel's.

21 MR. MCPARTLAND: Okay.

22 BY MR. HARMAN:

23 Q. Have you met with anyone, any other  
24 lawyer other than Pat, regarding Ms. Ashdown's  
25 lawsuit?

1                   A. I met with one of his colleagues. I  
2           don't remember his name.

3                   Q. When was that?

4                   A. Did you say when was that or what was  
5           that?

6                   Q. When was that?

7                   A. I believe it was June of this year.

8                   Q. Where did that take place?

9                   A. At their law offices.

10                  Q. Was that in lower Manhattan?

11                  A. I don't remember the address.

12                  Q. And was anyone else present at that  
13           meeting?

14                  A. Just myself, Pat and his colleague.

15                  Q. And did you review any documents during  
16           that meeting?

17                  A. Yes.

18                  Q. What documents did you review?

19                  A. E-mails, stuff relating to my job.

20                  Q. Anything else?

21                  A. No. I believe that was the nature of  
22           the documents.

23                  Q. What e-mails did you look at?

24                  A. When you say, "what e-mails," you want  
25           to know the nature of the e-mails?

1 Q. I want to know what e-mails you looked  
2 at.

3 A. They were correspondence that I was  
4 involved in.

5 Q. What type of correspondence?

6 A. Some of them were between me and my  
7 supervisor, some were between myself and Kerry  
8 Ashdown. I think that was all the e-mails.

9 Q. And when you say your supervisor, who  
10 do you mean by that?

11 A. Lawrence Sanders, my general manager.

12 Q. So it's your recollection that you  
13 looked at e-mails between you and Mr. Sanders; yes  
14 or no?

15 A. Yes.

16 Q. And then you looked at e-mails between  
17 you and Ms. Ashdown?

18 A. Yes.

19 Q. And did you look at any other e-mails?

20 A. I don't recall.

21 REQ MR. HARMAN: I'm just going to call for the  
22 production of all e-mails that were reviewed by  
23 Mr. Maietta during the June meeting, and we will follow  
24 up in writing, and that would be true with respect to any  
25 additional requests made on the record today.

1 MR. McPARTLAND: Okay.

2 BY MR. HARMAN:

3 Q. And then you also testified, in  
4 addition to the e-mails, that you looked at stuff  
5 related to the job?

6 Is that a fair recollection?

7 A. Stuff related to my job, yes.

8 Q. What do you mean by that?

9 A. There's a report called the performance  
10 commission, and we took a look at one of those.

11 Q. And which one did you look at?

12 A. I don't know the specific dates of it,  
13 but it involved sessions from a member. I don't  
14 remember the member's name. The performance  
15 commission goes over pay period reports for  
16 trainers, so I don't remember the dates of this  
17 particular one.

18 Q. Was this report for you? Was it  
19 generated for your -- was it a performance  
20 commission report for you?

21 A. No.

22 MR. McPARTLAND: Object to the form.

23 Q. Whose performance commission report was  
24 it?

25 A. I don't remember the trainer's name on

1           this one. I think it was one of the trainers that  
2           I was in charge of at that time. It's a report  
3           that I run for all the trainers, including myself.

4                   Q. Was there some inaccuracy contained  
5           within the report?

6                   A. Define "inaccuracy."

7                   Q. Well, was the report related to  
8           Ms. Ashdown?

9                   MR. McPARTLAND: Object to the form.

10                  A. I don't remember which trainer report  
11           it was run for. The way the report works is it's  
12           a system that the personal training manager and  
13           fitness manager have access to. And during the  
14           course of any pay period, you run this report to  
15           make sure the trainers are properly compensated  
16           for sessions, the correct sessions were pulled,  
17           following up to make sure training clients are  
18           utilizing their sessions. So it's something that  
19           the managers are very intimate with in relation to  
20           the PT business.

21                  Q. But you looked at the report?

22                  A. Yes. Part of my job is I have to look  
23           at the report on a daily basis.

24                  Q. But in June, in your lawyer's office,  
25           you looked at a performance commission report?



1 A. That's correct.

2 Q. Did you look at more than one?

3 A. No. It was the same report.

4 DIR Q. And without delving into conversations  
5 you had with your lawyer, what was your understanding  
6 of the purpose of looking at the report?

7 MR. MCPARTLAND: Objection. Don't  
8 answer that. You're going into  
9 communications now. You can ask him what he  
10 looked at.

11 RUL Q. I'm not asking you about your  
12 communications with your lawyer. I'm asking you about  
13 whether you have any independent understanding as to why  
14 you were looking at that report.

15 MR. McPARTLAND: Objection. It's  
16 privileged.

17 I'm instructing you not to answer.

18 MR. HARMAN: Mark it for a ruling,  
19 please.

20 Q. Do you remember any names on the  
21 report?

22 A. No. As I said, I don't remember the  
23 names of the clients that we were looking at.  
24 There's a lot of clients that appear normally on  
25 these reports.

1 Q. And you don't remember what trainer it  
2 was for?

3 A. I don't want to tell you the wrong  
4 name.

5 Q. Do you remember anything about the name  
6 of the trainer?

7 A. If I don't remember the name, I don't  
8 know if I would remember --

9 Q. Just so the record is clear, this was  
10 in June this year, three months or so ago?

11 A. Yes. We were looking at performance  
12 commissions, and that's one of the reports you're  
13 asking me that I looked at, and I'm trying to give  
14 you the most truthful answer.

15 Q. Did you look at more than one report?

16 MR. McPARTLAND: Asked and answered.

17 You can answer.

18 A. No. I just looked at one performance  
19 commission.

20 Q. But you don't remember the name of the  
21 trainer?

22 A. No.

23 Q. And do you remember whether this was a  
24 man?

25 A. Yes. It could have either been Ryan

1 Hopkins or Bobby Dwyer.

2 Q. Why do you believe it was either Ryan  
3 Hopkins or Bobby Dwyer?

4 A. These are the trainers that were  
5 involved, I believe, in what we're speaking about  
6 today.

7 Q. Well, what do you mean by "what we are  
8 speaking about today"?

9 A. Well, the performance commission that  
10 we're looking over -- I don't know if I'm  
11 answering you incorrectly -- it was in relation to  
12 sessions that shouldn't have been on the  
13 performance commission. And these are the two  
14 trainers that were involved. And when I answer  
15 you that I don't remember which trainer, I don't  
16 remember if we were looking at Bobby's specific  
17 performance commission or Ryan's. So I don't want  
18 to answer you inaccurately.

19 Q. Is Ryan still employed at Equinox?

20 A. No.

21 Q. And when was the last time that he was  
22 employed by Equinox?

23 A. I believe it was June of this year.  
24 June of 2013.

25 Q. And how did his employment end with

1 Equinox?

2 A. He voluntarily resigned for another  
3 position.

4 Q. Another position where?

5 A. I believe he's currently working in  
6 Soho, at another -- his own practice, his own  
7 fitness center.

8 Q. And, again, when you say, "what we are  
9 speaking about today," I don't know what that  
10 means exactly. So you're going to have to work  
11 with me.

12 What is -- what did you mean when you  
13 said, "what we're speaking about today"?

14 MR. McPARTLAND: Asked and answered.

15 You can answer.

16 A. I was speaking about the performance  
17 commissions. You asked me what I looked at, and I  
18 told you I looked at performance commissions and  
19 e-mails.

20 Q. So let's stick with the performance  
21 commissions.

22 And you believe it was either for Ryan or  
23 Bobby; right?

24 A. That's correct.

25 Q. What do you recall about the

1 performance commission?

2 A. There were sessions, but that's what's  
3 on performance commissions; either Equifits, free  
4 PTs, tiered sessions, AmEx sessions. So what I  
5 remember specifically about that one, is we were  
6 looking at AmEx PT sessions from an expired  
7 member -- or excuse me, a cancelled member.

8 Q. You were looking at expired AmEx PT  
9 sessions?

10 A. No. I was looking at AmEx PT sessions  
11 for a cancelled member.

12 MR. McPARTLAND: I'm going to object to  
13 this line of questioning. We're delving  
14 into what was happening during an  
15 attorney-client meeting and it's  
16 inappropriate. You have copies of the  
17 commission reports. Put them in front of  
18 him and ask him questions about it.

19 But you have to stop asking him questions  
20 about the meeting or I will instruct him  
21 not to answer. I don't want to interrupt  
22 the deposition, but this is an odd way to  
23 go about this.

24 MR. HARMAN: I have a right to ask him  
25 about everything he looked at.

1 MR. MCPARTLAND: You can ask him what  
2 he looked at, but you can't ask him why it  
3 was shown to him or what he understood --

4 MR. HARMAN: I didn't ask him why it  
5 was shown to him. If you continue these  
6 kinds of speaking objections in the  
7 presence of your client, we're --

8 MR. MCPARTLAND: It's not a speaking  
9 objection. It's an attorney-client  
10 privilege.

11 MR. HARMAN: You have made your  
12 objection known. So far he's not testified  
13 to any communications between an attorney  
14 and client.

15 Can I move on, please?

16 MR. MCPARTLAND: Sure.

17 BY MR. HARMAN:

18 Q. With respect to the document that you  
19 looked at, you recall that there were AmEx  
20 personal training sessions from a cancelled  
21 member; is that correct?

22 A. Yes.

23 Q. What was the significance, if anything,  
24 about that?

25 A. The significance of sessions pulled for

1 a cancelled member are just inherent in the  
2 phrase. Sessions should be pulled for members who  
3 are no longer utilizing the gym unless there is an  
4 extenuating circumstance, or note in their account  
5 as to why these sessions should be pulled.

6 And at the time, I was a fitness manager,  
7 and one of the jobs of the fitness manager is to  
8 do the payroll, do the pay period ending. So I  
9 was reviewing the performance commission, like I  
10 do every pay period, to make sure sessions were  
11 properly pulled for trainers, to make sure the  
12 trainers were properly compensated for their time.

13 And you become quite familiar with the  
14 reports in making sure that everything is in its  
15 proper order. And what I had noticed on this  
16 particular report were there were three or four  
17 sessions pulled on the same date for a member.  
18 Part of my job is to actually go into the system,  
19 check the member's account, make sure the sessions  
20 were properly pulled, to see if there were any  
21 notes on the sessions.

22 There are occasions where multiple  
23 sessions are pulled on the same day, but there are  
24 notes indicating that the session is from another  
25 day. Either the training client late-cancelled or

1 no-showed; there was an issue at the front desk.

2 These particular sessions, there weren't any  
3 notes. They were just all pulled on the same day,  
4 and it turned out that that member had not even  
5 utilized the club in quite some time.

6 Q. And were these conclusions that you  
7 came to in June of this year?

8 A. No. This was a performance commission,  
9 I believe, when I was the fitness manager of Soho,  
10 which was in 2011.

11 Q. So these are conclusions you reached in  
12 2011?

13 A. Yes, when I was running the reports.  
14 Like I told you, it's something that on a daily  
15 basis, you run it. During that time in 2011, when  
16 we used a system called eTrac there was a  
17 spreadsheet that we developed to make sure that  
18 new members had utilized their Equifits and their  
19 free PTs.

20 There's also a type of member in 2011  
21 that had American Express sessions. These were  
22 the type of leads that we wanted to make sure we  
23 made priority for the fact that trainers had  
24 additional times to train them based on the  
25 American Express sessions.



1                   So the job of the fitness manager is to  
2                   track that on the spreadsheet, make sure the  
3                   sessions were utilized by the right trainer, in  
4                   the proper time frame, and then we want to check  
5                   up with the trainer to make sure that the client  
6                   was converted into an actual purchasing training  
7                   member.

8                   Q. Is the eTrac system still utilized  
9                   today?

10                  A. No. We've moved to a different system.  
11                  It's a little more automated.

12                  Q. What is the system?

13                  A. It's called Blue Sky. It's an ESP  
14                  pipeline.

15                  Q. When did you start using Blue Sky?

16                  A. Blue Sky was rolled down -- we've been  
17                  using Blue Sky for other programs, but now, as far  
18                  as the tracking of leads and notes, that started  
19                  in 2012.

20                  Q. So it's your recollection that you  
21                  noticed the three or four sessions on the  
22                  performance commission report back in 2011?

23                  A. Yes.

24                  Q. And when in 2011 did you notice that?

25                  A. I don't remember the exact monthly time

1 frame, but the performance commission that you're  
2 speaking about, I think, was the second time that  
3 I had noticed an aberration on the report. And  
4 after the first occasion, I just made a note of it  
5 just to see if maybe it was something that might  
6 have happened, computer error. And it wasn't  
7 until I noticed it this time, the second time,  
8 that it didn't seem right to me.

9 Q. When you say you noticed it on two  
10 different occasions, was that on the -- a  
11 performance commission report with the same  
12 trainer?

13 A. I believe so, yes.

14 Q. And when was the first time that you  
15 noticed it?

16 A. I don't remember the exact dates, but  
17 it was after February, in 2011. That's when I  
18 started at the Soho location as a fitness manager.

19 Q. And you say on the first occasion, you  
20 noticed what?

21 A. On the first occasion, I believe it was  
22 one or two sessions that didn't coincide with the  
23 trainer's active client roster. So I didn't know  
24 if it was maybe a training client who trained as a  
25 one-off. It wasn't until the second time, where I

1 believe it was three or four sessions, that I  
2 decided I needed to look further and make sure  
3 this was actually a training client for that  
4 particular trainer.

5 Q. And you said you made a note the first  
6 time?

7 A. Mental note. Mental note.

8 Q. You didn't speak to anyone about it?

9 A. No. I just went home and I spoke to my  
10 wife about it. I said, "Hey, I noticed this at  
11 work today."

12 Q. And what is your wife's name?

13 A. Sheila Maietta.

14 Q. And how long have you been married to  
15 Sheila?

16 A. Since April 8, 2011.

17 Q. And does your wife work at Equinox?

18 A. No.

19 Q. Is she a personal trainer?

20 A. No.

21 Q. What does she do for a living?

22 A. She works for North Shore Hospital.

23 She's involved in third-party billing.

24 Q. So you didn't speak to Mr. Sanders  
25 about it?

1 A. No.

2 Q. And you didn't speak to Ms. Ashdown  
3 about it?

4 A. No.

5 Q. And at that time, it was your -- who  
6 was your direct supervisor?

7 A. Lawrence Sanders.

8 Q. And you didn't speak to the particular  
9 trainer about it?

10 A. No.

11 Q. What did you say to your wife?

12 A. I told my wife that I noticed some  
13 sessions that were pulled for a trainer for a  
14 client that was not his. I just want to keep my  
15 eye on it.

16 Q. Now, earlier, you testified that you  
17 noticed that it was a client that was not on his  
18 roster. So at the time of the first incident, did  
19 you know for sure whether or not the client was  
20 the personal trainer or not?

21 MR. McPARTLAND: Object to the form.

22 You can answer.

23 A. The first time, I believe, was one or  
24 two sessions. We have, on any given month,  
25 anywhere from 400 to 500 active clients. It's

1           hard to remember all their names. So generally,  
2           in a day, I want to utilize my energies for either  
3           big inaccuracies or things that really require my  
4           attention.

5                       So this first case where it was just one  
6           or two sessions, I assumed that it could have been  
7           a member that the trainer met on the floor, met  
8           through a referral and they just pulled the  
9           session for either an hour on the floor, something  
10          of that nature.

11                      When I saw it the second time and it was  
12          four sessions on the same day, that's something  
13          that is a little more glaring that you're going to  
14          have to look a little further into.

15                      Q. It would be helpful if you just  
16          focus -- just in terms of time efficiency, if you  
17          just answer my questions.

18                      So on that particular day, when you  
19          noticed the one or two, what was alarming about  
20          it, specifically?

21                      A. That they were American Express  
22          sessions.

23                      Q. And what was alarming about American  
24          Express sessions?

25                      A. As a fitness manager, I'm responsible

1           for the leads that are given out to the trainers.  
2           So the American Express leads, specifically, they  
3           are few and far between, and those are names that  
4           I generally have a better time recalling or  
5           knowing who I gave that lead to.

6                       This particular member was not a lead  
7           that I gave to that trainer. So I was -- just  
8           made a mental note to see if maybe the person  
9           might have met that client on the floor, and if I  
10          saw it again, I was going to look into it a little  
11          further.

12                   Q. And I believe I already asked this, but  
13          what did you say to your wife?

14                   A. I went home, I told her that I noticed  
15          sessions that were pulled for a trainer that may  
16          not be his training client, and something I wanted  
17          to keep an eye on.

18                   Q. And you didn't talk to the trainer at  
19          that time?

20                   A. No.

21                   Q. You didn't think to just go and ask  
22          him?

23                   A. No, because it was just one or two.  
24          Like I told you, it's something where part of what  
25          the trainer needs to do is generate business for

1           themselves. The trainer could have very well been  
2           on the floor, engaged the member.

3                   Q. You didn't talk to the trainer; yes or  
4           no?

5                   A. No, not for the one session.

6                   Q. Who was the trainer's direct supervisor  
7           at that time?

8                   A. At that time, it would be myself, Mauro  
9           Maietta, and Kerry Ashdown, the personal training  
10          manager.

11                  Q. Are you testifying today that you were  
12          the trainer's direct supervisor?

13                  A. Yes, one of them.

14                  Q. And the trainer had another direct  
15          supervisor?

16                  A. Yes. The way the personal training  
17          department works --

18                  Q. Answer the question, yes or no; there  
19          was another direct supervisor?

20                  A. Yes.

21                  Q. Who was that?

22                  A. Kerry Ashdown, the personal training  
23          manager.

24                  Q. And you didn't think to go speak to  
25          Ms. Ashdown about it?

1 A. It's not something that --

2 Q. Just answer the question, please. Just  
3 answer the question; you didn't think to speak to  
4 Ms. Ashdown about it?

5 MR. McPARTLAND: Object to the form.

6 You can answer.

7 A. No.

8 Q. So there was a second time where you  
9 noticed three or four sessions; yes?

10 A. That's correct, yes.

11 Q. And at that time, what, if anything,  
12 did you do about it?

13 A. At the time of when I noticed the  
14 sessions?

15 Q. Correct. This is the same personal  
16 trainer?

17 A. On that report, yes.

18 Q. And this time there are three or four  
19 sessions?

20 A. Yes. So what -- part of the daily  
21 tasks I have to go through, like I told you, is  
22 track, and what I did that time -- because I  
23 noticed it again for the same trainer with the  
24 same type of sessions, I looked into the member's  
25 account, noticed the member was a cancelled



1 member. The member hadn't even used the Soho  
2 location.

3 If I remember correctly, that member was  
4 using one of our Florida clubs. And I noticed  
5 there were no notes as to why the sessions were  
6 pulled. I noticed who pulled the sessions. And I  
7 printed out the report just to verify with my  
8 eTrac. And then, it was really something where I  
9 had to decide what to do in relation to it in our  
10 department, and I felt the best course of action  
11 was to speak with my supervisor, Lawrence Sanders,  
12 somebody that I've known for the entire time that  
13 I was in the company.

14 I went to Lawrence and I asked him for  
15 advice on what I should do with this particular  
16 situation. He's somebody that I trust to ask  
17 advice. He's been my general manager now two  
18 locations, and I asked him how I should handle the  
19 situation because I wanted to ask Kerry about it,  
20 but I did not know how to ask her because I was  
21 always very fearful of how she would respond when  
22 I would bring up things in the office.

23 We didn't have the best communication in  
24 the PT office. Any time she didn't like my  
25 opinion on something, she had a tendency to raise

1 her voice --

2 Q. I haven't asked you about your  
3 relationship with Ms. Ashdown. I want you to  
4 answer my questions. It's going to be a lot  
5 easier.

6 I just asked you, what, if anything, you  
7 did about the second incident when you noticed the  
8 three or four sessions?

9 MR. McPARTLAND: He is answering the  
10 question.

11 A. I just wanted to give you a --

12 Q. So you spoke to Mr. Sanders; yes or no?

13 A. Yes.

14 Q. And you chose not to speak to  
15 Ms. Ashdown; yes or no?

16 A. Not until I -- after I spoke with  
17 Lawrence because I was asking his advice on how to  
18 speak with her.

19 Q. So you noticed these three or four  
20 sessions for this personal trainer, and you did  
21 not speak to Ms. Ashdown?

22 A. No.

23 Q. And you never spoke to Ms. Ashdown  
24 prior to reporting the session pulls to  
25 Mr. Sanders; correct?

1                   A. About the sessions or spoke to her in  
2                   general?

3                   Q. About the sessions.

4                   A. No, I didn't speak to her about the  
5                   sessions.

6                   Q. And the personal trainer, did you ever  
7                   speak to him about the sessions?

8                   A. No.

9                   Q. And so you went and spoke to  
10                  Mr. Sanders.

11                  Did you go and speak to him on that day?

12                  A. I told him that day that I wanted to  
13                  speak with him. I don't remember if I spoke to  
14                  him later that day or the next day.

15                  Q. What did you say to him?

16                  A. I told him I needed to speak to him  
17                  about sessions that I noticed were pulled, and I  
18                  wanted his advice on how to handle it and how to  
19                  approach Kerry with the information.

20                  Q. And what did he say?

21                  A. I showed him the forms commission. I  
22                  think he was in a little bit of disbelief. He  
23                  said, "Okay. I'll handle it from here. No need  
24                  for you to make a big deal about it."

25                  I don't remember his exact verbiage, but

1           he told me he was going to handle the situation  
2           from that moment forward.

3                     Q. Did he say anything else?

4                     A. No.

5                     Q. Did you say anything to him?

6                     A. Just in relation to the performance  
7           commission. I told him what I had told you about  
8           what I determined about the sessions; they were  
9           for a cancelled member. There were no notes as to  
10          why the sessions were pulled. The member wasn't  
11          utilizing our club. And he said, "Okay. I'll  
12          take care of it from here."

13                    Q. Did the performance commission report  
14          indicate who had pulled the sessions?

15                    A. The report doesn't tell you who pulled  
16          the sessions, but when you go into the member's  
17          account to look at the sessions pulled, it does  
18          have an initial system of the individual who  
19          pulled the sessions.

20                    Q. And when you first noticed -- during  
21          the first incident, when you first noticed the two  
22          sessions, did you go into the account to see who  
23          had initialed it?

24                    MR. McPARTLAND: Object to the form.

25                    You can answer.

1                   A. When I first went in, I don't remember  
2 if I looked at the initials, no.

3                   Q. And how about the second time?

4                   A. Yes. Like I told you, I went in to  
5 look because it was three or more sessions. When  
6 I went into the account, and you pull it up to see  
7 if there are notes, that's right there on the same  
8 line item. It's notes and then the initials of  
9 the person who pulled it.

10                  Q. And what notes were there?

11                  A. There were no notes for any of the  
12 three or four sessions pulled, and the initials  
13 were KA.

14                  Q. When you say "initials," what do you  
15 mean by that?

16                  A. Well, the way the system works is they  
17 take the first letter of the first name, first  
18 letter of your last name, and they put that -- I  
19 guess, associated with the individual who pulled  
20 the sessions.

21                  Q. So by the second time, was it your  
22 belief that -- what does "KA" stand for, if you  
23 know?

24                  A. KA, in relation to that performance  
25 commission, would be Kerry Ashdown.

1                   Q. And so after your review of the second  
2                   situation that you've testified to, was it your  
3                   belief that Kerry Ashdown had pulled these  
4                   sessions?

5                   A. Based on the initials, I would believe  
6                   that she pulled them, yes.

7                   Q. You tell Lawrence Sanders that Kerry  
8                   Ashdown had pulled these sessions?

9                   A. No. I just told him that her initials  
10                  were on the report, so it looks as if Kerry had  
11                  pulled the sessions.

12                  Q. So you did tell him that it looks as if  
13                  Kerry had pulled the sessions?

14                  A. Well, yes, because I told him that the  
15                  information on the sessions, they were AmEx  
16                  sessions for a cancelled member. And when I  
17                  looked in to make sure, to see the notes, the  
18                  initials I saw were KA.

19                  Q. And you never spoke to the trainer to  
20                  ask the trainer whether Kerry had pulled the  
21                  sessions for him?

22                  A. No.

23                  Q. You never asked Kerry if she had pulled  
24                  the sessions?

25                  A. No.

1 Q. Do you ever pull sessions for anyone?

2 A. All the time. The training manager,  
3 the personal training manager, fitness manager, we  
4 have to pull sessions on a daily basis.

5 Q. So is it fair to say, then, that the  
6 initials KA would appear on a lot of commission  
7 reports?

8 A. Yes.

9 Q. At the time that Ms. Ashdown was  
10 working as the personal trainer -- please let me  
11 finish the question --

12 MR. HARMAN: Could you repeat --

13 Q. As the personal training manager, is it  
14 fair to say that her initials would have appeared  
15 on a lot of the reports that you review?

16 A. They wouldn't appear on the commission  
17 reports. They would appear in the system, in the  
18 E-club system, where we would go in and look or  
19 pull the sessions from. The report just gives you  
20 the member ID number, the date they were pulled,  
21 the member's name. And then on that corresponding  
22 page, which trainer they were pulled for.

23 Q. And can a trainer pull sessions him or  
24 herself?

25 A. No.

1 Q. So a manager has to pull a session for  
2 a trainer?

3 A. Managers can pull the sessions, or the  
4 front desk when the member signs into the club.

5 Q. So let's set the -- there's two ways,  
6 then. You either pull a session when you check in  
7 at the club; right?

8 A. Yes.

9 Q. Or a manager has to pull the session  
10 for the trainer and the member?

11 A. Yes.

12 MR. McPARTLAND: Objection to the form.

13 You can answer.

14 A. It's what's called a forget-to-pull.  
15 So the training client didn't pull it at the front  
16 desk, and then the manager would pull the session  
17 to make sure the trainer is properly compensated.

18 Q. And it's your testimony that you have  
19 to do that all the time?

20 A. On a daily basis, yes.

21 Q. Is it fair to say that Ms. Ashdown  
22 would have done that on a daily basis?

23 A. Absolutely.

24 Q. And you have Ms. Ashdown's former  
25 position; is that correct?



1           A. Yes. I'm now the personal training  
2 manager of Equinox.

3           Q. And it's your testimony that she was  
4 never your supervisor?

5           A. No. We worked together in the same  
6 department.

7           Q. Just answer the question. Was she your  
8 supervisor or not?

9           A. Can you define "supervisor"? I'm not  
10 trying to be --

11          Q. I'm asking you -- you worked at Equinox  
12 for a while. How long have you worked at the Soho  
13 location?

14          A. Since 2011; February 2011.

15          Q. Okay. And during that time, was  
16 Ms. Ashdown ever your supervisor?

17          A. Yes.

18          Q. And when did she first become your  
19 supervisor?

20          A. I believe it was the end of the month  
21 of February. When I originally started, I was  
22 working with Jessica Dart, who was the personal  
23 training manager. I worked with her, I think, for  
24 less than two weeks.

25          Q. Is there a fitness manager at the Soho

1 location now?

2 A. Yes.

3 Q. Who is that?

4 A. Darwin Diaz.

5 Q. Do you supervise -- is that a man or a  
6 woman?

7 A. That's a man.

8 Q. And Mr. Diaz, do you supervise  
9 Mr. Diaz?

10 A. Yes.

11 Q. How long have you supervised Mr. Diaz?

12 A. I believe he started October 2012.

13 Q. So it's fair to say, then, that any  
14 time you -- when you look at commission --  
15 performance commission reports, there's always  
16 going to be a manager's initials beside a  
17 forget-to-pull?

18 A. Not on the report. There are no  
19 managerial initials on the report.

20 MR. McPARTLAND: Object to form.

21 A. There are always going to be initials  
22 next to a session that is pulled inside of E-club,  
23 but not on the commission report.

24 Q. And how do you get into E-club?

25 A. On the Equinox computers, they're

1 already set up. There's an icon on the desktop.  
2 You click on it, and it asks you for a user name  
3 and password.

4 Q. How long does that process take?

5 A. You have to click the desktop icon. If  
6 the computer is loading quickly that day, it's  
7 pretty quick. It asks you for your user name, you  
8 put the user name, put the password, and you're in  
9 the E-club. And you have sorted options on the  
10 screen.

11 Q. And how frequently do you go into  
12 E-club to check the initials of a session?

13 A. You're not going into E-club to check  
14 initials. You're going into E-club to check the  
15 sessions are pulled, pulled for the right trainer,  
16 pulled on the right dates, checking notes, getting  
17 member contact information. That's where their  
18 e-mail address and phone numbers are stored. So  
19 you have to go into E-club for that, to run the  
20 performance commissions through E-club. To run  
21 first-time buyer reports is through E-club. We  
22 run a number of reports through that. And that  
23 program is pretty much open throughout the day.

24 Q. Had you ever had a discussion with  
25 Ms. Ashdown, prior to this conversation you had

1 with Mr. Sanders, about why she pulled a session  
2 for a trainer?

3 A. We've had discussions in relation to --  
4 the main thing that I would probably ask questions  
5 about are comp PTs and the free PTs that you would  
6 find on the commission report. One of the things  
7 we never want trainers to do is pull these  
8 sessions on the same day. Part of the Equinox  
9 brand is they meet first for an equal fit, and on  
10 a separate day, they're supposed to meet for the  
11 free PT. Gives the trainer time to develop a  
12 program.

13 So part of the relationship with PTM and  
14 FM is to follow up with leads. If a session was  
15 pulled, just update the eTrac at that time to make  
16 sure that it wasn't done on the same day. So  
17 there are probably numerous occasions where PTM  
18 and FM would have to speak about sessions being  
19 pulled.

20 Q. And do you believe that Ms. Ashdown had  
21 improperly pulled sessions for this particular  
22 trainer?

23 A. Yes. Those sessions on the performance  
24 commission, those three or four, what was most --  
25 what made it feel as if they were improperly

1 pulled was the fact that the member was cancelled,  
2 that the member never used the Soho location on  
3 that year, primarily used one of our Florida  
4 locations.

5 So those are the type of warning signs  
6 that would make you think a session wasn't pulled  
7 correctly. You know, if a session was pulled for  
8 a member who utilizes our club, who is an active  
9 training client of the trainer, that really  
10 doesn't set off any alarms.

11 Q. When you say "cancelled," what do you  
12 mean by that?

13 A. Meaning you're no longer a member of  
14 Equinox. After a member's membership is  
15 cancelled, what is in their inventory stays, it  
16 persists in E-club. I don't know how long it  
17 persists, but if I were to be a member of Equinox  
18 and cancelled my membership, anything I had in my  
19 inventory would still be there. Even after the  
20 membership was cancelled.

21 Q. But you testified that the member was  
22 using a location in Florida; correct?

23 A. At the time, where their membership was  
24 active, I believe it was a 2009 cancellation, and  
25 that's when they were using the Florida location.

1 Q. So they were using the Florida location  
2 and then the membership was cancelled?

3 A. Yes. They were a Florida Equinox  
4 member with a cancelled membership with sessions  
5 pulled at the Soho location in a time where they  
6 didn't have an active membership.

7 Q. Had sessions ever been pulled at the  
8 Soho location?

9 A. No.

10 MR. McPARTLAND: Objection to the form.

11 Q. And for how long a period was this  
12 report, this commission report?

13 A. This one we're speaking about,  
14 generally we process reports for the pay period,  
15 which is a two-week period. So this one was  
16 either for a two-week period, or it was from the  
17 day prior to when I was running it.

18 Because at the time, like I told you,  
19 with eTrac, I would come in and run the report  
20 from the day before to make sure that Equifits  
21 were pulled, free PTs were pulled; and then in  
22 that eTrac, AmEx clients, to make sure they were  
23 utilizing their American Express sessions.

24 So at the time we were using eTrac,  
25 performance commission was run every day by the

1 fitness manager.

2 Q. And at the time that you went to  
3 Mr. Sanders, I take it that you thought there was  
4 a real problem?

5 A. Yes.

6 Q. And you thought that Ms. Ashdown caused  
7 the problem?

8 A. In the nature of the fact that when I  
9 looked into the account, her initials were next to  
10 it, yes.

11 Q. And you had this confidential with  
12 Mr. Sanders that you described.

13 Did you ever have another conversation  
14 with him about this particular issue?

15 A. No. That was the first time I spoke to  
16 him about it, and then that day he told me, "I'll  
17 take care of it from here."

18 Q. Did you ever speak to him about the  
19 situation involving the session pulls and  
20 Ms. Ashdown at any other time?

21 A. After that period of time, no. He  
22 said, "I'll take it from here," so it was out of  
23 my hands at that point.

24 Q. Did he ever report anything back to  
25 you?

1 A. No.

2 Q. So as you sit here today, do you have  
3 any idea whether the trainer was involved in  
4 pulling the sessions?

5 MR. McPARTLAND: Object to the form.

6 A. Repeat. You want to know if the  
7 trainer knew about the sessions being pulled? Is  
8 that your question?

9 Q. Yes.

10 A. I don't know if the trainer was  
11 involved, no.

12 Q. But this was a trainer that you  
13 supervised?

14 A. That's correct.

15 Q. And at that time, around that time  
16 period, you never learned whether or not this  
17 particular trainer was involved in pulling the  
18 sessions?

19 A. No. After I spoke with Lawrence, he  
20 told me he would take it from there, so I didn't  
21 want to get involved in the situation. I was just  
22 listening to what he instructed me to do.

23 Q. And what did he instruct you to do?

24 A. That he would handle it from here.

25 Q. Did he give you any other instructions?



1           A. No. I just went about business as  
2           usual every day after that, continued to run the  
3           report, continued to deal with the trainers,  
4           continued to work with Kerry.

5           Q. Did you apply for Ms. Ashdown's  
6           position when it was vacant?

7           A. No.

8           Q. And what I mean by that is, prior to  
9           Ms. Ashdown joining Equinox, did you apply for her  
10          position?

11          A. No. I was at the -- I don't  
12          remember -- I don't know when she was hired by  
13          Equinox. I was working at the Chelsea location as  
14          the fitness manager. That was around -- I worked  
15          there since the Chelsea location opened. I  
16          started there as a trainer, I then moved up into  
17          the manager and training program. They approached  
18          me, the company did, my supervisor at the time,  
19          Rich Velasquez, said, "We would love you to be a  
20          manager, would you like to?" I said,  
21          "Absolutely." That was early in 2008.

22          By June of 2008, I was promoted as  
23          fitness manager of the Chelsea location. I was  
24          fitness manager there for about three-and-a-half  
25          years. And the natural progression at Equinox is

1           you go, generally, from manager in the training  
2           program to fitness manager, and then eventually to  
3           personal training manager.

4                       Every year at Equinox we have  
5           professional meetings. Your general manager calls  
6           you into the office, you speak about your career  
7           growth, things you're looking for yourself, where  
8           you stand on a personal level. It's one of those  
9           things where they always coach you as to where  
10          your career can go, options that you have.

11                      And one of the things we spoke about  
12          towards the end of my 10-year fitness manager is  
13          where did I see my career going. And I said I  
14          loved the fitness manager position it, I've been  
15          doing it for a long time, I'm looking for the next  
16          step. I want to develop my career with the  
17          company. I'm ready, one day, for the personal  
18          training manager position of a club, wherever that  
19          might be.

20                      Q. When did that conversation take place?

21                      A. That happens yearly, so I had one in  
22          2008, one in 2009, 2010. My 2011 one, I don't  
23          remember the exact date. I had one in 2012. I'll  
24          probably have one this year, also, in 2013.

25                      Q. But you became the personal training

1 manager in September of 2011?

2 A. That's correct.

3 Q. When would your personal development  
4 meeting have taken place in 2011?

5 A. In 2011, they either happen at the  
6 start of the year or they happened at the end of  
7 the year. That year, I don't remember which one  
8 it was.

9 Q. Were you working at Soho at the end of  
10 2010?

11 A. No. I was at the Chelsea location as  
12 the fitness manager.

13 Q. When did you start working in Soho?

14 A. February 2011.

15 Q. What is your understanding of the  
16 circumstances that led to Ms. Ashdown's departure  
17 from Equinox?

18 A. All I know is that she was terminated  
19 from her position. No one ever told me the  
20 reason. And I asked what I should instruct the  
21 trainers, and they said, "It's not really for them  
22 to know why, it's just she's no longer a member of  
23 the Equinox staff." And I understood it as such  
24 and I didn't press the matter.

25 Q. So as you sit here today, do you have

1 an understanding of why she was terminated?

2 A. No. They never -- my supervisor,  
3 Lawrence Sanders, nor anyone else, ever told me  
4 why.

5 Q. Just so the record is clear -- and I'm  
6 reminding you you're under oath -- you never had a  
7 conversation with anybody regarding why  
8 Ms. Ashdown was terminated?

9 A. No.

10 MR. McPARTLAND: Objection.

11 Q. Did you have a conversation with your  
12 wife about why Ms. Ashdown was terminated?

13 A. I spoke with my wife about it.

14 Q. So your early testimony wasn't  
15 accurate?

16 MR. McPARTLAND: Objection. What  
17 testimony are we referring to?

18 Q. You just testified, under oath, that  
19 you haven't spoken to anybody about why  
20 Ms. Ashdown was terminated. Then I asked you if  
21 you had spoken to your wife about it, and you said  
22 yes?

23 MR. McPARTLAND: Objection. Objection  
24 to form. Please don't harass the witness.  
25 If you want to read back your question, I

1 don't know -- note my objection. That's  
2 all.

3 You can answer.

4 MR. HARMAN: Your objection is noted.

5 Q. So let's go back. Tell me who you've  
6 spoken to about Ms. Ashdown's termination.

7 A. I speak to my wife. I don't list my  
8 wife when I say someone or anybody. To me she's  
9 my wife, she's my partner. So it's something  
10 where when I speak to her, it's not as if I'm  
11 speaking to anybody in this room, you know.

12 So I spoke to her about it. I got a  
13 phone call when I was home on my day off to say  
14 that Kerry was no longer the PTM. My wife was  
15 sitting next to me on the couch, I told her what  
16 had happened. She said, "Why?" I said, "They  
17 didn't tell me." That's it. And I reported to  
18 work the next day as the fitness manager of the  
19 club.

20 Q. When were you made the personal  
21 training manager?

22 A. I don't know if it was two or three  
23 weeks after she was terminated. I was doing -- I  
24 was running the whole department for about a two-,  
25 three-week period on my own, and they approached

1 me and said, "Based on how long you've been with  
2 the company, based on your hard work and things  
3 that you've done, we think that you would be a  
4 good fit for this role."

5 Q. Were you pleased to see Ms. Ashdown  
6 leave Equinox?

7 A. No. I wouldn't say I was pleased.

8 Q. Now, you said, you spoke to your wife.

9 Did you speak with anyone else  
10 regarding -- have you, at any other time?

11 A. I don't recall, no.

12 Q. You don't recall or you haven't?

13 A. I don't believe I have.

14 MR. McPARTLAND: Other than counsel,  
15 obviously.

16 Q. Other than counsel, obviously.

17 A. No, just my wife.

18 Q. And you said you spoke to her when you  
19 received a phone call?

20 A. Yes. We were on the couch in our  
21 apartment.

22 Q. Have you spoken to her at any other  
23 time?

24 A. To my wife?

25 Q. About Ms. Ashdown's termination?

1 A. No. It was just back in 2011.

2 Q. And have you read the complaint in this  
3 lawsuit?

4 A. I read it. I wouldn't say I digested  
5 everything, no. It was quite wordy.

6 Q. Did you read it or not?

7 A. Yes, I read it.

8 Q. And were you served a hard copy of it?

9 A. Yes. I believe I have the --

10 MR. McPARTLAND: Object to the form.

11 Q. Did someone hand you a hard copy of the  
12 complaint at Soho Equinox?

13 A. No.

14 Q. Were you given a hard copy of the  
15 complaint?

16 A. Yes. I think I actually printed it  
17 out. I think I might have received it via e-mail.

18 Q. And you read it?

19 A. Yes.

20 Q. And after having read it, do you have  
21 an understanding of why Equinox claims Ms. Ashdown  
22 was terminated?

23 A. I don't remember even reading it, if it  
24 was listed as to why she was terminated.

25 Q. As you sit here today, under oath, do

1           you know why Ms. Ashdown was terminated?

2                   A. I can't say I know. I can only assume.

3                   Q. I'm not asking you to assume anything.

4                   I'm asking you, as you sit here today, do  
5           you know why she was terminated?

6                   A. The reason why I'm wording it that way  
7           is I misunderstood you earlier with the  
8           who-I-spoke-to question. So I want to make sure  
9           I'm not misleading you again. I can assume as to  
10          why, but no one has clearly told me this is why  
11          she was terminated from Equinox.

12                  Q. Does Ms. Ashdown have a -- any kind of  
13          personnel profile at Equinox?

14                  A. Personnel profile?

15                  Q. You testified to a Mr. Diaz; correct?

16                  A. Darwin Diaz, yes, my fitness manager.

17                  Q. Does he have a profile as an employee?

18                  A. When you say "profile," I don't  
19          understand what you mean.

20                  Q. Some type of computerized profile that  
21          identifies him and that would track his  
22          performance.

23                  A. Well, we would all be on the  
24          performance commission, because not only managers,  
25          we also have training clients.



1 Q. Let's take it one step at a time.

2 A. I want to make sure I understand you.

3 Like a Facebook profile? I don't understand what  
4 you mean. Similar to that?

5 Q. I'm going to try to make it clear,  
6 then.

7 How many personal trainers do you manage?

8 A. Currently, 37.

9 Q. And of those 37, how many of them are  
10 men?

11 A. I would say, I think that's 22. We  
12 have a pretty good split over there. We have  
13 quite a few female trainers.

14 Q. And can you give me the name of one of  
15 your female trainers?

16 A. Sure. Danielle Vetrano.

17 Q. Danielle. Did Danielle have an  
18 employee profile on Equinox's Intranet? And do  
19 you know what I mean by that?

20 A. No. Are you asking if it's similar to  
21 member?

22 Q. Correct.

23 A. When we go into the system, we -- or it  
24 can be found in E-club also. Just like I  
25 explained to you, you can find a member's contact

1 info and e-mail address. Employees are also  
2 entered, but we have a different ID number. It's  
3 an employee number. It starts with an "S."  
4 That's how you know, and it generally tells you  
5 underneath whether they're a manager of the club,  
6 trainer, what department they're working in.

7 Q. What is the name of the system that you  
8 access for employees?

9 A. There is no separate one for employees.  
10 This is just E-club. An E-club is -- like I told  
11 you earlier, we access a lot of different  
12 information through E-club. We can -- on  
13 performance commission, first-time buyer report,  
14 member information. We can also -- we purchase  
15 packages through that system. It's pretty much  
16 our whole encompassing system.

17 Q. And if there is negative feedback on  
18 Danielle, could that be entered into the E-club  
19 system?

20 A. The only way it would be able -- it  
21 couldn't be entered by a member. A member  
22 wouldn't be able to enter that. In the notes of a  
23 session, I guess if you wanted to write something  
24 negative, you could, about the trainer, but that's  
25 not what E-club is used for.

1                   Q. What about managers; could they enter  
2 something negative?

3                   A. Can a manager enter something about  
4 another manager?

5                   Q. About a trainer.

6                   MR. McPARTLAND: Object to the form.  
7 He can answer.

8                   A. The only way to enter it about the  
9 trainer is if the trainer had sessions. Because  
10 you can't go into a profile and just make a  
11 comment about somebody. You would have to be  
12 making a note in reference to a -- something of  
13 inventory in the system.

14                  Q. If the trainer was terminated, would  
15 that be -- would it indicate that a trainer was  
16 terminated in the E-club system?

17                  A. I don't believe they would be in E-club  
18 anymore once they terminate. IT, I think, goes  
19 through occasionally and removes terminated  
20 employees from the system.

21                  Q. Occasionally. So there would be a  
22 period of time where you could still access an  
23 E-club profile after the employee is terminated?

24                  A. I don't know what that window is. I've  
25 never looked into a terminated employee's report.

1           The only reason why you would go into E-club to  
2           bring up an employee's profile, as you call it, is  
3           if they have sessions that I need to pull.

4                     There are some employees throughout the  
5           company that purchase training, Pilates, and then  
6           you would go in there. There would be no other  
7           reason to bring up an employee unless you were  
8           pulling a session from their inventory.

9                     Q. Do you have an E-club profile?

10                    A. I believe so.

11                    Q. And did Ms. Ashdown have an E-club  
12           profile?

13                    A. I believe so, yes.

14                    Q. And did you ever access her E-club  
15           profile?

16                    A. She had purchased sessions, and she  
17           would buy one pack for Ryan, because she was  
18           training with Ryan. I don't know if she ever  
19           asked me to pull a session for her.

20                    Q. Did you access her E-club profile; yes  
21           or no?

22                    MR. McPARTLAND: Object to the form.

23                    A. I don't remember if I ever accessed it.  
24           I'm sure there would be an occasion where I would  
25           need to if she asked me to pull a session. But

1           like I told you earlier, you don't pull up an  
2           E-club profile unless you're trying to pull a  
3           session from inventory.

4                   Q. I'm not asking what the protocol is.  
5           I'm asking if you recall ever accessing her E-club  
6           profile.

7                   A. To answer your question, I don't recall  
8           if I ever accessed it.

9                   Q. But you testified that you would pull  
10          sessions for Ryan for her; is that correct?

11                  A. No. I said to you -- I never said that  
12          I pulled sessions for Ryan for her. You asked me  
13          if I had accessed it. I told you I don't remember  
14          if I would have ever had to pull a session for  
15          Ryan for her.

16                  Q. Could she have pulled the session  
17          herself?

18                  A. Yes.

19                  Q. Why would she have had to pull that?

20                  A. Could be she had a day off from the  
21          club, the pay period was going to end, and she  
22          reaches out to me and says, "Hey, I forgot to pull  
23          the session for Ryan." Ryan could have come into  
24          the office and say, "I trained Kerry on Thursday,  
25          pay period's going to end, can you pull up the

1 session for me," something that like that could  
2 have occurred.

3 At that point, Kerry would have been  
4 considered an active client of Ryan's, so there  
5 could very well be a session that needs to be  
6 pulled so that it shows on the performance  
7 commission. That's how the trainers get pulled.

8 If the session's not pulled from  
9 inventory and it doesn't appear on the performance  
10 commission, technically they wouldn't be paid for  
11 that session on the paycheck.

12 Q. So you testified earlier about a  
13 commission, a performance commission that was  
14 covering about a two-week period.

15 And as you sit here now, you still don't  
16 know whether it was Ryan or Bobby?

17 A. I don't want to answer you  
18 untruthfully. That's why I'm telling you I don't  
19 know.

20 Q. And this commission report, the second  
21 time had three or four AmEx sessions, and you've  
22 testified why that caused you concern; correct?

23 A. Yes.

24 Q. And that you believe that Ms. Ashdown  
25 improperly pulled these sessions; correct?

1 A. Yes.

2 Q. And do you believe that she should have  
3 been terminated for improperly pulling sessions?

4 A. You're asking me my opinion?

5 Q. Yes.

6 A. I think there's more context to that.  
7 It would have to do in relation to the whole  
8 individual, what's going on. But that's  
9 technically stealing from the company, so if you  
10 pull things inappropriately, I guess termination  
11 can happen.

12 Q. So the answer is "yes"?

13 MR. McPARTLAND: Object to the form.  
14 He answered the question.

15 A. Yes.

16 Q. So you believe that Ms. Ashdown stole  
17 from the company?

18 A. With these performance commissions,  
19 sort of why flags can go up with them also is  
20 trainers are always training on a two-week period  
21 to hit what's called pay period bonus.

22 So in a pay period bonus, you'll always  
23 hear talk around the club, especially coming close  
24 on Saturdays, Fridays, that they need to get to  
25 42. If a trainer only trains 41 sessions, they

1           would only be paid a certain amount of money for  
2           the sessions. For instance, they'll take \$10 for  
3           all 41 of those sessions, so it would be ten times  
4           41. If they make it to 42, it deems them for  
5           bonus possibilities. Which means retroactively,  
6           for all those sessions, they would be paid more.

7                        So instead of ten, they would be paid \$5  
8           for every session. So these sessions that I  
9           noticed, they also brought the trainer to over 42.  
10          So technically, there's additional bonus monies  
11          that were taken from the company because the  
12          trainer didn't earn 42, which would have been  
13          bonus.

14                       Q. But you never spoke to the trainer  
15          about it?

16                       A. No.

17                       Q. And the trainer remained employed there  
18          up until recently?

19                       A. Yes.

20                       Q. And was the trainer ever disciplined?

21                       A. For the sessions?

22                       Q. Um-hum.

23                       A. I didn't discipline the trainer, no.

24                       Q. Were you aware of any discipline?

25                       A. No.



1           Q. Is it your responsibility to provide  
2           performance feedback to trainers?

3           A. No. We have business meetings, we talk  
4           about leads. You know, in the course of these  
5           discussions, you can speak about how their  
6           training is going, how their programming is  
7           progressing.

8           Q. Did you ever write a written  
9           performance review of your trainers?

10          A. No.

11          Q. If a trainer was disciplined, would you  
12          be aware of it?

13          A. If it was something where they lost  
14          privilege or they were suspended, yes.

15          Q. And so, again, I'm going to ask you the  
16          same question. I'm going to ask you to answer the  
17          question this time.

18          So you believe Ms. Ashdown stole sessions  
19          from Equinox?

20          MR. McPARTLAND: Object to the form.

21          A. I wouldn't say it was sessions; it  
22          would be money.

23          Q. So do you believe Ms. Ashdown stole  
24          money from Equinox?

25          A. By pulling extra sessions, yes.

1 Q. And I take it you believe that's a  
2 pretty serious act; correct?

3 A. Yes.

4 Q. And someone who steals from Equinox, do  
5 you believe they should be terminated?

6 A. Like I told you earlier, I would want  
7 to understand the context. I don't think that  
8 would be black and white. I would want to  
9 understand the situation, what caused it. That  
10 would make me make a full decision.

11 Q. If someone stole sessions from Equinox  
12 without any justification whatsoever, do you  
13 believe that that employee should be terminated?

14 MR. McPARTLAND: Objection.

15 You can answer.

16 A. If it was intentionally and  
17 maliciously, yes.

18 Q. And do you believe that Ms. Ashdown  
19 intentionally and maliciously stole sessions from  
20 Equinox?

21 MR. McPARTLAND: Objection.

22 You can answer.

23 A. I never spoke to her or had discussions  
24 with her. I was instructed not to, so I don't  
25 even know what her mindset to pulling the sessions

1 was. So I don't want to speculate as to what she  
2 was thinking when she did it.

3 Q. But you believed she committed a  
4 serious offense; correct?

5 A. I believe she pulled sessions for a  
6 trainer that shouldn't have been pulled.

7 Q. And that was during a two-week period;  
8 correct?

9 A. When the sessions were pulled?

10 Q. Yes.

11 A. Well, the performance commission is  
12 during a two-week period, so those sessions would  
13 have been pulled during said period of the report.  
14 These particular sessions were all pulled on the  
15 same day.

16 Q. But you testified it concerned you  
17 enough to go to the location manager, Mr. Sanders;  
18 right?

19 A. Yes.

20 Q. And did you look at the report for the  
21 two weeks prior to that?

22 A. I definitely did my due diligence and  
23 looked back to see if there was personal --

24 Q. Just, did you look at the report for  
25 the two weeks prior to that?

1           A. I looked at every report, so I probably  
2           looked at that one, two weeks prior, the one  
3           after, the one before that.

4           Q. And did you see any other AmEx sessions  
5           on the other reports?

6           A. There were AmEx sessions on all  
7           reports.

8           Q. Did you see any improper AmEx sessions?

9           A. Just the one or two that we spoke about  
10          earlier, and I don't know which pay period was in  
11          conjunction --

12          Q. Did you physically show the report to  
13          Mr. Sanders?

14          A. Which report? The one with the three  
15          or four --

16          Q. Yes. The one with the three or four  
17          sessions.

18          A. Yes.

19          Q. So you printed it out?

20          A. That's correct.

21          Q. And you walked it -- you physically  
22          handed it to him?

23          A. Yes.

24          Q. Did you have any -- did you mark any  
25          hand notations on it?

1                   A. I don't believe so. I think I might  
2                   have circled the four AmEx sessions.

3                   Q. Did you make a copy of it?

4                   A. No. Just the one that I printed out.

5                   REQ           MR. HARMAN: We're going to call for the  
6                   production of the report that was handed to Mr. Sanders  
7                   by Mr. Maietta.

8                   MR. McPARTLAND: Take it under  
9                   advisement.

10                  Q. You testified that you looked at other  
11                  periods; right? So did you look at other periods  
12                  -- on that day, you were concerned; correct?

13                  A. On the day where I noticed those AmEx  
14                  sessions pulled, yes.

15                  Q. And so, what else, if anything, did you  
16                  do to complete your investigation?

17                  A. I looked in eTrac to make sure that the  
18                  client was not an active client of the trainer.  
19                  Also, went into E-club, used a member ID number  
20                  that's on the performance commission to look up  
21                  the member. Then I went into their inventory to  
22                  look at the sessions. I looked to see if there  
23                  were any notes.

24                  The sessions are generally pulled the  
25                  same day. I want to make sure if they were

1 forgot-to-pulls, are they going to have notes for  
2 these sessions from earlier in the week, earlier  
3 in the pay period, earlier in the month, that just  
4 were owed to the trainer.

5 I looked to see who the member was, to  
6 see if it was one of our active clients. When I  
7 realized that it was a cancelled member, who, when  
8 they were a member, was using a Florida club and  
9 wasn't an active client of the trainer, that's  
10 when I noticed that it was a problem.

11 Q. And as part of this investigation, did  
12 you look at the trainer's -- any other commission  
13 reports for any other periods for this particular  
14 trainer?

15 A. I think that day, I tried to remember  
16 when I noticed the other discrepancy. And I think  
17 I went back to look and see if it was either the  
18 same client, if they were notes or if they were  
19 pulled by the same individual.

20 Q. So you did look at other periods of  
21 time, other than this two-week period?

22 A. I believe so, yes.

23 Q. What other periods of time did you look  
24 at?

25 A. I don't remember the exact dates of

1           them. I looked at the report, I told you, in 2011  
2           on a daily basis for the pay period.

3           Q. I'm not asking you what you did on a  
4           daily basis. I'm asking you what you did as part  
5           of this investigation into Ms. Ashdown.

6           So what other periods of time do you  
7           recall looking at, if any --

8           A. I don't recall the exact dates.

9           MR. MCPARTLAND: Object to the form.  
10          You can answer. I'm sorry.

11          A. And I wouldn't call it an investigation  
12          into Ms. Ashdown. I would call it an  
13          investigation into the sessions that were pulled.  
14          I wanted to see why they were pulled for this  
15          trainer.

16          Q. As part of your investigation, what  
17          other time periods, if any, do you recall looking  
18          at?

19          MR. MCPARTLAND: Object to the form.

20          A. I don't know the exact dates, but I  
21          tried to find the initial discrepancies, and I  
22          believe I found in that report it was a different  
23          member. But I don't know the time period of that  
24          report.

25          Q. As part of this investigation, did you

1 find that any other sessions were improperly  
2 pulled other than the one you testified to?

3 MR. McPARTLAND: Object to the form.

4 A. No, I don't remember finding any other  
5 ones.

6 Q. Why do you believe that Bobby Dwyer  
7 might have been the individual whose name was on  
8 the commission report?

9 A. That's why earlier I told you I didn't  
10 want to answer you untruthfully. I don't remember  
11 if the first one was Bobby's, the second one was  
12 Ryan. But Kerry was very close with those two  
13 trainers. She trained with Ryan three days a  
14 week, and I think she had a more personal  
15 relationship with Bobby. I don't know how  
16 personal.

17 So these were two trainers that were most  
18 associated with her. That's why -- and I didn't  
19 remember which one because I didn't want to give  
20 you misinformation.

21 Q. So is it your testimony -- is your  
22 testimony that Ryan was involved in -- that the  
23 first two sessions were pulled for either Bobby or  
24 Ryan?

25 A. As we're speaking today, I don't



1           remember if the first one or two were pulled for  
2           Bobby or Ryan. I'm leaning towards Bobby, and the  
3           three or four AmEx PTs, I believe, were pulled for  
4           Ryan. But I don't remember --

5           Q. But both of them were involved?

6           A. Both names were involved. I don't know  
7           if the trainers were involved in the sessions  
8           being pulled --

9           Q. Both names were involved?

10          MR. McPARTLAND: Object to the form.

11          A. If I remember correctly, yes.

12          MR. HARMAN: What's the nature of the  
13          objection?

14          MR. McPARTLAND: Involved in what?  
15          Both the names were involved in what? I  
16          don't understand.

17          MR. HARMAN: It's not for you to  
18          understand. You made your objection.

19          MR. MCPARTLAND: You asked me a  
20          question.

21          Q. And is Bobby still working at Equinox?

22          A. No.

23          Q. And what was the nature of his  
24          departure from Equinox, from an employment  
25          standpoint?

1           A. He voluntarily resigned, I think, for  
2           another position in Jersey closer to home.

3           Q. When was that?

4           A. I believe it was in 2011. I don't  
5           remember the exact date.

6   REQ           MR. HARMAN: I'm going to call for the  
7           last known address of Bobby Dwyer.

8           MR. McPARTLAND: Take that under  
9           advisement.

10   REQ           MR. HARMAN: Also call for the last  
11           known address of Ryan Hopkins.

12           MR. McPARTLAND: We'll take that under  
13           advisement.

14           Q. And Ryan Hopkins, you said he  
15           voluntarily resigned recently, in June?

16           A. Yes, that's correct.

17           Q. Did you ever discipline Ryan Hopkins?

18           A. In what instance?

19           Q. In any instance.

20           A. Like any trainer, if he didn't have his  
21           name tag on, I told him to put his name tag on.

22           Q. Any other reason?

23           A. Not that I can remember, no. I had a  
24           good staff. They're generally not troublemakers.

25           Q. Do you use a cell phone?

1 A. Yes, I do.

2 Q. What type of cell phone do you use?

3 A. I'm using an iPhone 4S.

4 Q. And what's your cell provider?

5 A. Currently, Verizon.

6 Q. And what is your cell phone number?

7 A. [REDACTED]

8 MR. McPARTLAND: Note my objection.

9 Q. How long have you used that number?

10 A. Let's say, at least 10 years.

11 Q. And how long have you used Verizon as a  
12 provider?

13 A. I don't know if it's two or three years  
14 now.

15 Q. Who was your provider before Verizon?

16 A. AT&T.

17 Q. And do you use your iPhone 4S for work  
18 purposes?

19 A. Yes.

20 Q. Do you access work e-mail through your  
21 iPhone?

22 A. Yes.

23 Q. And do you use your texting feature?

24 Just in general, do you use your texting feature?

25 Do you text?

1 A. Yes.

2 Q. And do you text employees at Equinox?

3 A. Yes.

4 Q. Do you text on a daily basis?

5 A. Do I text on a daily basis --

6 Q. With employees of Equinox.

7 A. Yes.

8 Q. And how long have you been texting  
9 employees of Equinox?

10 A. Since I have been an employee at  
11 Equinox.

12 Q. And that was in 2008?

13 A. End of 2007.

14 Q. Did you ever text Ms. Ashdown?

15 A. I think so, yes.

16 Q. And did you ever text Ryan Hopkins?

17 A. I have, yes.

18 Q. And have you ever texted Bobby Dwyer?

19 A. I don't remember texting him. I don't  
20 believe so.

21 Q. And how about Lawrence Sanders; have  
22 you ever texted him?

23 A. Yes.

24 Q. When is the last time you remember  
25 texting him?

1 A. Lawrence?

2 Q. Yes.

3 A. On my birthday, he texted me to wish me  
4 happy birthday, and I responded, "Thank you, sir."

5 Q. And that was recently?

6 A. Yes. I just turned 30 on August 31st.

7 Q. Congratulations.

8 A. Thank you.

9 Q. How frequently would you say that you  
10 text Lawrence Sanders?

11 A. Very infrequently.

12 Q. How frequently do you text Mr. Diaz?

13 A. More frequently.

14 Q. How frequently?

15 A. I wouldn't say once a day, but I would  
16 say a couple of times a week.

17 Q. How frequently would you say you  
18 interact via text with the 37 trainers that you  
19 oversee?

20 A. Very infrequently. Only if they texted  
21 me because they're going to be running late for a  
22 shift. One or two of them texted me for my  
23 birthday, but I'm primarily an e-mail individual  
24 when it comes to work.

25 Q. So most work is conducted via e-mail?

1 A. For me, yes.

2 Q. Do you use one e-mail account for work?

3 A. Yes. I use the Equinox provided e-mail  
4 address for work.

5 Q. And what e-mail address is that?

6 A. [REDACTED]

7 Q. And is that one continuous --

8 A. Yes. [REDACTED]  
9 [REDACTED]

10 Q. And do you use any other accounts for  
11 work purposes?

12 A. Not for work purposes, no.

13 Q. And your interaction with trainers in  
14 terms of scheduling and routine sort of matters  
15 would be done by e-mail?

16 A. Yes. Anything that is business related  
17 is e-mail.

18 Q. And do trainers use -- are trainers  
19 obligated to use an Equinox e-mail address?

20 A. For anything involving their clients,  
21 the company prefers they use the company-issued  
22 e-mail address. They recently issued e-mail  
23 addresses for personal trainers. I don't remember  
24 when. In recent history it was. I don't remember  
25 if it was end of 2011, beginning of 2012, but they

1           recently gave them e-mail addresses. We feel it's  
2           just more professional to contact members.

3                       MR. HARMAN: Let's take a break for a  
4           few minutes. Let's take 10 minutes.

5                       (Recess taken).

6

7 CONTINUED EXAMINATION

8 BY MR. HARMAN:

9                       Q. Mr. Maietta, you testified earlier to  
10          an employee ID number beginning with an "S"; is  
11          that correct?

12                      A. Yes.

13                      Q. What is your employee ID number?

14                      A. I don't know it.

15                      Q. And how do you use it? Do you have it  
16          written down somewhere?

17                      A. No. I don't really need it for  
18          anything.

19                      Q. Why is that?

20                      A. I don't utilize it. I don't have a  
21          trainer, so I would never have to go into my --  
22          this account to purchase something.

23                      Q. When is the last time you recall using  
24          it?

25                      A. When I probably signed up for --

1 through PT on the Net, we have this site where we  
2 could sign up for education and for certificates,  
3 so I probably needed that number to make sure that  
4 the course was deducted from my paycheck.

5 Q. And when was that?

6 A. The last course I signed up for was  
7 sometime in 2012. They required payroll  
8 deduction.

9 Q. If you want to use your payroll  
10 identification number, where would you find it?

11 A. In E-club.

12 Q. So you could find it if you wanted to?

13 A. Yes.

14 Q. When you went to work and used the  
15 computers at work?

16 A. Yes.

17 Q. Do you have a computer at work?

18 A. I do.

19 Q. And is it solely for your use, or do  
20 you share it?

21 A. My computer can be used by numerous  
22 people. Just when I utilize it for my work, I  
23 have to sign in with my code to start the day.

24 Q. Where is the computer located?

25 A. It's in the personal training office.



1           It's right off the training floor right next to  
2           the cardio area.

3                     Q.   And how -- are there desks in the  
4           office?

5                     A.   It's not desks.   I don't know what you  
6           call it when it's attached to the wall.   It's like  
7           a slab of wood attached to the wall.   So it's one  
8           long -- I guess you call it a conference desk  
9           against the wall, and there's two computers on it.

10                    Q.   And do you use one of those computers  
11           as --

12                    A.   Primarily, I use the one on the left.

13                    Q.   And in order to use it, you have to  
14           sign in with a log-in ID?

15                    A.   Your user name, and then it asks you  
16           for your password.

17                    Q.   What is your user name?

18                    A.   My first initial and my last name.

19   DIR              Q.   What is your password?

20                    MR. McPARTLAND:   Objection.

21                    I'm instructing you not to answer.

22                    I think -- you can, if you have a good  
23           reason for asking for it, write to me  
24           afterwards and I'll let you know about it.

25                    Q.   Has your user name ever changed during

1           your tenure at Soho?

2                   A. My user name, no.

3                   Q. Has your password ever changed?

4                   A. Yes. We have to change the password to  
5 log on, I think, every month or two. The system  
6 just notifies you.

7                   Q. Have you ever given your log-in  
8 information to any other Equinox employee?

9                   A. No.

10                  Q. Have you ever given your log-in  
11 information to anyone?

12                  A. No.

13                  Q. And when you are logged into the  
14 computer, using it in the personal training  
15 office, do you log out at the end of your work  
16 time on the computer?

17                  A. No. I just lock my computer.

18                  Q. How do you do that?

19                  A. Well, I hit "control alt delete." It  
20 asks you whether you want to restart the computer,  
21 lock it, shut it down. I just click "lock."

22                  Q. When it is locked, can someone else  
23 then log on?

24                  A. They wouldn't be able to log on using  
25 my interface on the computer. You wouldn't be

1           able to -- you would only be able to kick me off  
2           if you were an administrator, but then you  
3           wouldn't be able to access my files.

4                   Q. On a typical day, you've gone in,  
5           you've logged in to your computer.

6                   The one on the right or the left?

7                   A. Left.

8                   Q. So you typically work on the computer  
9           on the left.

10                  Do other people use that computer?

11                  A. They do, but not when it's logged on to  
12           my name. Whenever I leave the office, I lock it.

13                  Q. When you're present at the Soho  
14           location, are you always logged in to that  
15           computer?

16                  A. Yes.

17                  Q. And when you're present at the Soho  
18           location, does anyone else use that computer?

19                  A. No.

20                  Q. And when Ms. Ashdown was the personal  
21           training manager, did she have that same computer?

22                  A. Yes. She had the one on the left that  
23           I'm using now. It was the same area, but the  
24           computers have since been upgraded, so it's not  
25           the same motherboard.

1 Q. When were they upgraded?

2 A. I think they did them in July of this  
3 year. They came in and they gave us new memory  
4 cards, made them faster. They gave use more RAM.  
5 I'm not very computer literate, but that's what  
6 they did.

7 Q. What type of computers are they?

8 A. Dell computers.

9 Q. So the Dell computer, the monitor, and  
10 the actual plastic box that contains the  
11 components that make the computer function, is  
12 that still the same?

13 A. I don't know. I wasn't there when IT  
14 switched them out, so I don't know whether they  
15 took the entire motherboard out when they added  
16 things in.

17 Q. Does the monitor look the same?

18 A. Yes.

19 Q. Does it look new?

20 A. The monitor doesn't -- define "new."

21 Q. Do you believe it's the same monitor  
22 that's been there since Ms. Ashdown was there?

23 A. I think so, yes.

24 Q. Do you believe the computer is the same  
25 computer that was there since Ms. Ashdown was

1           there?

2                   A.   You mean like the motherboard and all  
3           that stuff?

4                   Q.   I mean the box that's underneath the  
5           desk.

6                   MR. McPARTLAND:   Object to the form.

7                   A.   I don't know.

8                   Q.   Do you know what I'm talking about?

9                   A.   You're talking about where the memory  
10          and everything is stored --

11                  Q.   Correct.

12                  A.   -- the monitor.

13                  Q.   Yes.

14                  A.   I believe they replaced those out.

15                  Q.   Okay.   You testified earlier that you  
16          text for work.

17                         Did you ever look for any text messages  
18          concerning Ms. Ashdown?

19                  A.   Earlier I told you I e-mail for work.

20                  Q.   But you also said that you had texted  
21          Ms. Ashdown.

22                  A.   That we have texted, yes.

23                  Q.   Did you ever conduct a search for any  
24          text messages with Ms. Ashdown?

25                  A.   Like, you mean, Kerry, did we look

1           for --

2                   Q. Did you ever look for any text messages  
3           that you exchanged with Ms. Ashdown?

4           A. No.

5                   Q. Never at any time?

6                   MR. McPARTLAND: Object to the form.

7           A. No.

8                   Q. And did you ever look for any text  
9           messages exchanged with Mr. Sanders that concerned  
10          Ms. Ashdown?

11                  MR. MCPARTLAND: Object to the form.

12          A. No.

13                  Q. Have you ever texted with Mr.  
14          Matarazzo?

15          A. No.

16                  Q. How about with Mr. Plotkin?

17          A. No.

18                  Q. Earlier you testified that you met with  
19          your attorney to prepare for today's deposition  
20          and that you looked at some e-mails, and that you  
21          looked at a performance commission report.

22                  Did you do anything else to prepare for  
23          today's deposition?

24          A. No.

25                  Q. And other than Pat, did you speak with

1 anyone else to prepare for today's deposition?

2 A. No.

3 Q. Is today a normal workday for you?

4 A. Yes.

5 Q. So can you take the day off?

6 A. No. I'll be going in to work later  
7 today.

8 Q. What are your normal work hours? What  
9 were you scheduled to work today?

10 A. I start at 8:30 and I go till about  
11 8:00 tonight.

12 Q. And so on Tuesdays, you normally start  
13 at 8:30?

14 A. Yes.

15 Q. And did you tell anyone at work that  
16 you would be in at a different time?

17 A. I let my trainers know this morning  
18 that I would be in a meeting, and I would be in  
19 later in the afternoon. And I reminded my  
20 supervisor, Lawrence, that I would be coming into  
21 the deposition today and I wouldn't be in until  
22 later.

23 Q. How did you do that?

24 A. Told him in person. We have a  
25 manager's meeting on Monday. I went to the

1 manager's meeting and said, "I'm not going to be  
2 here at the beginning of the day. I have a court  
3 deposition. I'll be in later."

4 Q. Did he have a response?

5 A. He said, "Okay."

6 Q. Now, you testified that you printed out  
7 and read the complaint in this case; is that  
8 correct?

9 A. Yes.

10 Q. And did you ever discuss that complaint  
11 with Mr. Sanders?

12 A. I told him that I read it and that I  
13 noticed that I was named, but we didn't speak in  
14 depth about what it was about.

15 Q. And when did that conversation take  
16 place?

17 A. I believe it was June of this year.  
18 May or June. I don't remember exactly when I  
19 found out that I was named.

20 Q. And what did you say to him?

21 A. I don't remember the exact words, but I  
22 told him I couldn't believe I was being sued and  
23 what do we do now.

24 Q. What did he say in response that?

25 A. He said, "I don't know. Let me speak



1 to my boss, because Equinox was named in it, and  
2 you're an Equinox employee, and let me get back to  
3 you." And that's when I found out we were being  
4 defended by Pat and his law firm.

5 Q. And did you say anything else to  
6 Mr. Sanders?

7 A. In relation to being sued?

8 Q. Well, you said you went to him and you  
9 had a conversation with him and you said you can't  
10 believe that you were being sued, and he said he  
11 would get back to you.

12 My question to you was, did you say  
13 anything else to him?

14 A. No, not that day. Just briefly, we  
15 were at work, and then we haven't been discussing  
16 the case since.

17 Q. So that day, you had a conversation  
18 with him and I've asked you about it.

19 Is there anything else about the  
20 conversation that you remember?

21 A. No, sir.

22 Q. Did he say anything other than that  
23 he'll get back to you?

24 A. No. That's all I remember that he  
25 said.

1 Q. And did he get back to you?

2 A. No. We then found out we were being  
3 defended, we were told about the nature of the  
4 case --

5 MR. McPARTLAND: I'm going to object.

6 Anything, even an attorney within  
7 Equinox, just don't disclose any attorney  
8 communications. You can answer the  
9 question, but don't discuss anything you  
10 discussed with me or with counsel at  
11 Equinox. Okay? I just want you to  
12 understand that.

13 THE WITNESS: Okay.

14 Q. Do you know whether Equinox has  
15 in-house counsel?

16 A. I believe they do. I don't know the  
17 name.

18 Q. What makes you believe that they do?

19 A. I believe from an e-mail I read. I  
20 think it might have said, I think, general counsel  
21 and the person's signature.

22 Q. And have you ever spoken to the  
23 individual who signed the e-mail, general counsel?

24 A. I don't remember his name, so I don't  
25 remember if I spoke to that person. We never had

1 a conversation face to face.

2 Q. Have you ever had -- other than with  
3 your lawyers, have you ever had a meeting with any  
4 of the corporate employees of Equinox concerning  
5 this lawsuit?

6 A. When you say I've had a meeting with  
7 the corporate employees, what do you mean?

8 Q. Anyone ever talk to you about this  
9 lawsuit?

10 A. No. It was just to explain to us that  
11 there was a lawsuit over the phone, and what the  
12 next steps would be, and we would be reached out  
13 to if we were needed, and I was reached out to for  
14 a deposition.

15 MR. McPARTLAND: Objection. Again, no  
16 attorney communications.

17 Q. So you said Sanders would get back to  
18 you, and did Sanders get back to you or not?

19 A. No.

20 Q. And did you ever discuss the complaint  
21 with him again?

22 A. No.

23 Q. You said you printed out a physical  
24 copy; correct?

25 A. Yes.

1 Q. What did you do with it?

2 A. It was in either one of my files. I  
3 brought it home, I was going to read it, I never  
4 really read it fully again. I just read it when I  
5 first printed it out. I perused the first few  
6 pages, and I have the hard copy somewhere. It  
7 hasn't really been the focus of my mind over the  
8 last couple of months.

9 REQ MR. HARMAN: I'm going to call for  
10 production of the hard copy that Mr. Maietta has  
11 testified he has in his possession at home or  
12 elsewhere.

13 MR. McPARTLAND: Taken under  
14 advisement.

15 Q. You said you have a file.

16 Do you have a file on Ms. Ashdown?

17 A. No. I put it in one of those folders  
18 so it doesn't get bent or ruined. I'm very  
19 regimented that way. I don't like wrinkles.

20 Q. Is there anything else that you put in  
21 the file?

22 A. No.

23 Q. Do you maintain any other documents on  
24 Ms. Ashdown?

25 A. No.

1 Q. You said at some point someone reached  
2 out to you regarding this lawsuit.

3 Who is that? Again, I'm not asking you  
4 about content of conversations with a lawyer. I'm  
5 asking you, who reached out to you?

6 You had this conversation with Lawrence  
7 Sanders, then someone reached out to you by  
8 telephone. Who was that?

9 A. It was a member of Pat's office just  
10 explaining to me the --

11 MR. McPARTLAND: Not what we spoke  
12 about; just who it was. That's all.

13 A. Just a member of Pat's office.

14 Q. And other than a member -- other than  
15 Pat or a member of Pat's office, did anyone else  
16 reach out to you regarding this lawsuit?

17 A. No.

18 Q. And did you ever have any other  
19 conversations with Mr. Sanders about this lawsuit  
20 after that first conversation?

21 A. Just that he was being deposed and that  
22 I was being deposed, but we didn't speak about the  
23 content of it.

24 Q. When did those conversations take  
25 place?

1           A. Yesterday, when I told him that I was  
2           coming in for a deposition. And he said, "I go in  
3           on Thursday," and that was it.

4           Q. So what did you -- where did this  
5           conversation take place?

6           A. It's on the gym floor on the way to the  
7           managers' meeting.

8           Q. What did you say?

9           A. "Hey, I'll be in late tomorrow. I have  
10          my deposition." He said, "Okay. I have mine on  
11          Thursday." And then we went to the managers'  
12          meeting.

13          Q. That's the only conversation you've had  
14          with him about this lawsuit since you spoke to him  
15          about the complaint?

16          A. Yes.

17          Q. And how would you describe your  
18          relationship with Mr. Sanders?

19          A. I don't know --

20          Q. Let's take, professionally, how would  
21          you describe your relationship with Mr. Sanders?

22          A. I think it's very good. We've been --  
23          he's been my general manager at two locations. He  
24          was my general manager at the Chelsea location.  
25          He became my general manager at the Soho location.

1 After he moved to that area, he realized that the  
2 personal training department needed some help,  
3 needed some fixing.

4 So he reached out to my general manager  
5 at the Chelsea location at the time and said,  
6 "Listen, I would like to bring Mauro over here to  
7 be my fitness manager and help run the  
8 department."

9 Q. So you'd describe the relationship as  
10 very good?

11 A. Yes. We get along well.

12 Q. And do you have a social relationship  
13 with him?

14 A. No. Just work relationship.

15 Q. Have you ever interacted with him  
16 outside of the Soho Equinox location?

17 A. Yes. We -- every year we play an  
18 Equinox softball league. He plays on the softball  
19 team. I'm usually the captain, so we play  
20 softball together. Occasionally we play  
21 basketball with the trainers. We go to the courts  
22 and he plays basketball also, so he joins us.

23 Q. Other than an Equinox-sponsored event,  
24 have there been any other occasions where you've  
25 interacted with him outside of Equinox?

1 A. No. It's always been Equinox events.

2 Q. Do you talk to him about personal  
3 things?

4 A. Yes.

5 Q. On a regular basis?

6 A. Not on a regular basis. Just when --  
7 if it's something that is going to affect work,  
8 I'll bring it up to him.

9 Q. Can you give me an example? I'm not  
10 trying to pry into your personal life, but can you  
11 give me an example of what you mean by that?

12 A. Yes. He's known me for the past  
13 six years since I've been an employee in 2009. My  
14 father passed away from lung cancer, and, you  
15 know, there were days when I had a tough time at  
16 work or I needed time to leave early, and I would  
17 go to him and I would say, "Listen, this is what  
18 I'm going through, is it all right if I leave  
19 early? This is how I'm feeling." And he would  
20 sit there and he'd listen, give me some advice,  
21 because he knows I was very close to my father.

22 Q. So he was helpful to you during that  
23 period?

24 A. Helpful in that he was very  
25 understanding and he was just somebody -- he would



1 listen when I was having a tough time at work.  
2 I'm very family-oriented. When my father passed  
3 away from lung cancer, it hit me pretty hard.  
4 There are days when you're at work and you think  
5 about it, or something reminds you and you -- who  
6 can you go to? It's somebody I can trust to speak  
7 to about it.

8 Q. Did you take time off from work during  
9 that period?

10 A. When my father was sick, I was still  
11 working. Just on my days off I would, of course,  
12 go visit him. On days when I was working and he  
13 needed a ride to chemo, I would drive him to chemo  
14 and then come back after I dropped him back home.  
15 And then after he passed away, I was off for about  
16 three or five days, help my mother plan the  
17 funeral, the wake, and just getting the house in  
18 order. But I came back to work pretty quickly. I  
19 needed something to take my mind off of what had  
20 just happened.

21 Q. How much time in total would you say  
22 that you took off during that time period?

23 A. I was in the hospital the day my father  
24 died, and I think the next three to four days I  
25 wasn't at work. I think I was fortunate to -- one

1 or two of those days were days that I was -- were  
2 my normal scheduled days off.

3 Q. Did you take personal days on the other  
4 days that you were scheduled?

5 A. Yes. They're called bereavement days.  
6 Equinox gives you three bereavement days.

7 Q. Other than bereavement days, did you  
8 take any other types of leave from Equinox during  
9 that period?

10 A. No. I think it was three bereavement  
11 days and two of my normal days off.

12 Q. Were you aware that Ms. Ashdown had  
13 health issues?

14 A. Yes.

15 Q. When did you become aware of that?

16 A. When she told me about them.

17 Q. When did she tell you about them?

18 A. When we first started working together,  
19 I think she had told me that she recovered from  
20 cancer. I don't remember which type she told me  
21 she recovered from. And I think we had some good  
22 conversations on that, because cancer is -- it was  
23 a big thing in my family, so I -- of course, I  
24 understood what she went through personally, but I  
25 know how that can affect you.

1                   My mother beat breast cancer twice, my  
2                   aunt beat breast cancer. Both my grandparents, my  
3                   female grandparents, died from breast cancer. And  
4                   my father had died from lung cancer, so we had  
5                   good conversations about that, and I understood.

6                   And then, when she told me it had come  
7                   back -- I believe it was ovarian cancer, I don't  
8                   remember correctly what she told me -- I told her,  
9                   "Listen, you have to take care of yourself, take  
10                  care of your body. Take as much time as you need.  
11                  I'm here, I'll hold it down."

12                  But she was very, very diligent with  
13                  scheduling her treatments early in the morning.  
14                  She would come to work, she would still put in  
15                  long days, and I said, "Listen, work will always  
16                  be here, but you have to make sure you take care  
17                  of yourself." Because I know how important it is  
18                  to rest.

19                  I mean, my mother did the same thing.  
20                  She kept teaching while she was doing treatment,  
21                  and I think she needed that, so maybe Kerry needed  
22                  to work also just to help her feel strong so the  
23                  body would stay strong.

24                  Q. I'm going to stop you there.

25                  You said you had good conversations with

1 Ms. Ashdown regarding cancer.

2 Did you have good conversations with  
3 Ms. Ashdown regarding anything else?

4 A. Yes. We -- it was -- we had -- I would  
5 say -- I don't know what -- the word I want to use  
6 to describe it. The relationship in the office,  
7 there were days where it was tense, and there were  
8 days where everything was fine.

9 You can't really have a good conversation  
10 about cancer, but what I meant by that is we found  
11 common ground on it, and we were able to discuss  
12 it openly. And neither one of us would really --  
13 you can't really find a negative in the other  
14 person when you're having that kind of  
15 conversation.

16 There were some days in the office  
17 where --

18 Q. I understand that.

19 Is there any other topic that you share  
20 that commonality with her on, other than cancer?

21 A. I think leading the team. We had good  
22 conversations on leading the team.

23 Q. Anything else other than leading the  
24 team?

25 A. I can't remember other specific

1 categories.

2 Q. So you had commonality on leading the  
3 team and you had commonality on cancer.

4 Was there anything else that you had  
5 commonality on?

6 MR. McPARTLAND: Object to the form.

7 A. Not that I remember.

8 Q. Describe to me your commonality on  
9 leading the team.

10 A. Well, she came over from the UK where  
11 she was in charge of trainers in departments.  
12 Part of why I became a manager at Equinox is  
13 because I like to teach, I like to work with other  
14 trainers, see them be successful. So whereas  
15 she's been a manager before, I've been a manager  
16 before -- (interruption).

17 Q. I'm sorry. Go ahead.

18 A. You know, we had commonality on that  
19 based on the fact that we led teams before, we've  
20 been doing it for a period of time. You know,  
21 being a manager is something where you hire a  
22 trainer and you see them go from either a  
23 different career to becoming a successful trainer.  
24 It's a rewarding experience.

25 Q. Did you want her job?

1           A. Did I want -- eventually I wanted to be  
2           a personal training manager. Not necessarily her  
3           job, but at Equinox Soho.

4           Q. Was there another location that you  
5           would rather have been at?

6           A. It's not a question of rather. I told  
7           you earlier in the day that's the natural  
8           progression of --

9           Q. Did you want her job; yes or no?

10          MR. McPARTLAND: Objection. It's been  
11          asked and answered.

12          A. No, I didn't want her job.

13          Q. You didn't want her job.

14          So did you ever volunteer to cover shifts  
15          for her?

16          A. We don't really work in shifts. It  
17          would be fitness manager and personal training  
18          manager work together Monday through Wednesday.

19          Q. So you didn't.

20          Did you ever volunteer to cover days for  
21          her?

22          MR. McPARTLAND: Objection.

23          You can continue.

24          MR. HARMAN: I'm going to start moving  
25          to strike as nonresponsive.

1 Q. I just want you to answer the  
2 questions. I'm not trying to be difficult.

3 MR. MCPARTLAND: He answered your  
4 question.

5 A. I'm answering them. I'm trying to --

6 Q. So did you ever volunteer to cover days  
7 for her?

8 A. I told her once she told me that she  
9 was sick, that I would be here and I would be able  
10 to hold down the team, take whatever time she  
11 needed.

12 Q. I understand your statement, hold down  
13 the team.

14 I'm asking if you ever volunteered to  
15 cover a day for her?

16 A. If it was necessary, absolutely.

17 Q. Did you volunteer to cover a day for  
18 her?

19 A. I don't remember ever phrasing a  
20 sentence like it. That's not how the PTM and FM  
21 would really speak about -- it's not a matter of  
22 covering. It's a matter of we have to make  
23 sure -- the reason why there is two of us is that  
24 everything is available to the team.

25 So if there was ever a day or time where

1 she couldn't get something done, absolutely, I  
2 would step in. Vice-versa, where if there is  
3 something I couldn't get to or I couldn't do --

4 Q. I'm asking about your specific  
5 recollection. I'm not asking you about  
6 generalities.

7 I'm asking you about if you specifically  
8 recall making an adjustment in your schedule  
9 because Ms. Ashdown had cancer?

10 MR. McPARTLAND: Object to the form.

11 A. No.

12 Q. I'm handing you what's been marked for  
13 identification as Exhibit 1. Please take a look  
14 at it.

15 (Plaintiff's Exhibit 1, second  
16 amended complaint between Kerry Ashdown  
17 and Equinox, et. al., was marked for  
18 identification.)

19 A. (Witness reviews document.)

20 MR. HARMAN: For the record,  
21 Plaintiff's Exhibit 1 is the second amended  
22 complaint between Kerry Ashdown and Equinox  
23 et. al. It's a 20-page document dated  
24 May 24, 2013.  
25



1 BY MR. HARMAN:

2 Q. Let me know when you're ready. Take as  
3 much time as you need.

4 A. (Witness reviews document.) I finished  
5 reading it.

6 Am I able to use the restroom now, or was  
7 there a question you asked me before you handed it  
8 to me?

9 MR. McPARTLAND: I don't think there's  
10 a question pending, is there?

11 MR. HARMAN: No, there's no question.

12 (Recess taken).

13 BY MR. HARMAN:

14 Q. Have you ever terminated anyone in your  
15 tenure as personal training manager?

16 A. Yes.

17 Q. Who did you terminate?

18 A. David Buklas, Jessica Desmond. I think  
19 that's it, as personal training manager.

20 Q. Why did you terminate David?

21 A. I remember he didn't show up to  
22 numerous floor shifts, and he had been late to a  
23 number of client sessions.

24 Q. And did you give him any written  
25 warnings prior to terminating him?

1           A. I think they were primarily verbal with  
2       David. We had a number of meetings in the office.  
3       I don't remember if I had a written verbal in his  
4       file.

5           Q. But do you recall giving him warnings?

6           A. Yes.

7           Q. And you maintained a file on him?

8           A. All employees have files. So we keep  
9       their certification, their CPR card --

10          Q. Where is that file located?

11          A. In the PT office, in the filing  
12       cabinet.

13          Q. And is it locked?

14          A. No.

15          Q. So anybody can access a file?

16          A. Yes.

17          Q. So if you put a -- if you put a written  
18       warning in someone's file, that would be available  
19       to any personal trainer?

20          A. Well, the personal trainer shouldn't  
21       know where the files are. They don't really make  
22       it public knowledge. But yes, if no one was in  
23       the office, someone could go into the file cabinet  
24       and disrupt the files if they chose.

25          Q. I'm not asking about disrupting the

1 files.

2 If you gave someone a verbal warning for  
3 no-showing however many times, and you  
4 memorialized that on a piece of paper and put that  
5 in the employee's file, according to your  
6 testimony, that would be available to anyone who  
7 wanted to access it, who could go into the office;  
8 is that correct?

9 A. That's correct.

10 MR. MCPARTLAND: Over my objection.

11 Q. There are files for all 37,  
12 approximate, personal trainers?

13 A. Yes.

14 Q. Is there a file on you?

15 A. No.

16 Q. Is there a file on Mr. Diaz?

17 A. No.

18 Q. And do you have a personnel file, if  
19 you know?

20 A. I believe I do. I believe Lawrence  
21 Sanders has that one. He has the managers' files.

22 Q. And Lawrence Sanders has an office?

23 A. Yes.

24 Q. Where is that located?

25 A. It's behind the front desk in the gym.

1 Q. And have you ever seen your file?

2 A. I've seen him take it out. I've never  
3 seen what's in the file.

4 Q. And have you ever seen Ms. Ashdown's  
5 file?

6 A. No.

7 Q. Can you describe the circumstances when  
8 Mr. Sanders took your personnel file out?

9 A. When we have our professional  
10 development meetings, copies, I think, of recent  
11 ones are in there. And when I was hired to be the  
12 fitness manager, I believe they put a copy of my  
13 contract in my file.

14 Q. So you have an employment contract?

15 A. Yes. It stipulates what my bonus  
16 structure is and what my salary structure is and  
17 what the position is.

18 Q. Did you physically see it put in there?

19 A. I didn't see it put into the file.

20 Q. But you know the document was  
21 generated.

22 Did you countersign it?

23 A. Yes, I signed it.

24 Q. And was there any reason, other than  
25 what you testified to, that you terminated David?

1           A. No. He was also an underperforming  
2           trainer, but I don't generally terminate or want  
3           to get rid of trainers for underperformance. It's  
4           generally when they do things that take away from  
5           the team that I really find it for grounds for  
6           termination.

7           Q. Why did you terminate Jessica?

8           A. I found out that she was training in  
9           another location, and that a lot of the times,  
10          when she couldn't train leads or clients who we're  
11          giving her here, she was either turning them down  
12          or rescheduling them for the other position.

13          Q. When did you terminate David?

14          A. When did I terminate David? It was  
15          sometime in 2011.

16          Q. How about Jessica?

17          A. If it wasn't -- I think it might have  
18          been early 2012 or late 2011.

19          Q. And other than David and Jessica, have  
20          you terminated anybody else?

21          A. Not as a personal training manager.

22          Q. How about a fitness manager?

23          A. At Soho, I don't think I terminated  
24          anybody in -- at Chelsea, I had to terminate a  
25          trainer who was working the floor. I don't

1           remember his name. He got into an altercation  
2           with one of the other trainers in front of the  
3           members during prime time, and it was a pretty  
4           aggressive occasion, so I had to terminate him  
5           on-site.

6                   Q. And do you remember that individual's  
7           name?

8                   A. I don't. I think his name was -- I  
9           think his first name was Nakia. I think it's  
10          Blair. N-a-k-i-a, Blair.

11                  Q. Have you ever given a trainer a written  
12          warning?

13                  A. Yes.

14                  Q. And when is the last time you gave a  
15          trainer a written warning?

16                  A. Sometime in 2012.

17                  Q. So this year you haven't given a  
18          trainer a written warning?

19                  A. No written warnings, no.

20                  Q. Not in the last nine months?

21                  A. No. It's --

22                  Q. Just --

23                  A. No.

24                  Q. How many written warnings do you think  
25          you issued in 2012?

1 A. Less than 15.

2 Q. And when you issue a written warning,  
3 do you physically hand the written warning to the  
4 employee?

5 A. I call him into the office. Generally,  
6 I already have the written warning written up. We  
7 speak about what actions led to it, allow them to  
8 read it. If they understand what further  
9 disciplinary actions will happen if the situation  
10 happens again, I sign and date it, then I give it  
11 to them to sign and date it. They sign and date  
12 it and I put it in their file.

13 Q. How about verbal warnings; when is the  
14 last time you gave a verbal warning?

15 A. I don't want to use verbal warning. I  
16 want to use it more as a coaching. I don't go up  
17 to the trainers and scold them. It's not -- I  
18 want to give them best practices. So it can be as  
19 simple as if a trainer doesn't have their name tag  
20 on, I'll go up and say, "Sam, where's your name  
21 tag?"

22 "It's in my backpack."

23 "Next time you have a break with a  
24 client, please go and get it."

25 If they don't have their program out

1 visible during the session, I could say, "Andy,  
2 where's your program today?" He'll say, "Sorry,"  
3 takes it out of his folder.

4 So it could either be in passing on the  
5 gym floor, or if it's something -- it's the second  
6 time they don't have a name tag on, maybe I'll  
7 call them into the office and I'll say, "Theo, how  
8 come you don't have your name tag on? Again, do  
9 you need me to print another one for you?"

10 So it can happen either on the floor, in  
11 the office. The situation dictates where it  
12 happens.

13 Q. When you were the fitness training  
14 manager, were you responsible for supervising the  
15 trainers?

16 A. Yes.

17 Q. And did you issue any written warnings  
18 during that period?

19 A. I may have, but it probably wasn't  
20 many.

21 Q. Did you terminate anyone during that  
22 period?

23 A. No.

24 Q. And did you ever issue any written  
25 warnings in conjunction with Ms. Ashdown? In



1           other words, did you ever decide with her that  
2           someone should be given a written warning?

3           A.   I don't believe so.

4           Q.   While you were the fitness training  
5           manager, were you aware of any trainers with  
6           problems with substance abuse problems?

7           A.   Meaning, did the trainers have,  
8           currently, substance abuse problems?

9           Q.   Yes.

10          A.   No.

11          Q.   How about trainers who had, in the  
12          past, had substance abuse problems?

13          A.   Yes.   One trainer, you know, in a  
14          business meeting, let me know a little bit about  
15          her past, and that she turned her life around when  
16          she found training.

17          Q.   What is her name?

18          A.   Danielle Vetrano.

19          Q.   And other than Danielle, are you aware  
20          of any other trainers who had substance abuse  
21          problems?

22          A.   No.   Just trainers, like a lot of  
23          people, they go out and drink Friday nights,  
24          Saturday nights, but I wouldn't quantify that as a  
25          substance abuse problem.

1 Q. Did you ever observe any behavior of  
2 any trainers, while working at Equinox, that would  
3 lead you to believe that they had substance abuse  
4 problems?

5 A. No.

6 Q. Did Ms. Ashdown ever tell you that she  
7 was concerned about the behavior of any of the  
8 trainers with respect to substance abuse?

9 A. No.

10 Q. Do you consider yourself a competitive  
11 person?

12 A. Yes.

13 Q. And do you recognize what's been marked  
14 for identification as Plaintiff's Exhibit 1?

15 A. Yes.

16 Q. Have you read this document?

17 A. Just now, I perused it all the way to  
18 page 20. The first few pages, I read more in  
19 depth than the others.

20 Q. Have you read this document prior to  
21 today?

22 A. Yes.

23 Q. When did you read it?

24 A. I don't remember the exact dates, but  
25 when I first heard about it. And I don't

1           remember, like I told you earlier, if I received  
2           it via e-mail or if I got a hard copy, but I  
3           believe I printed it out of an e-mail, and I did  
4           read the first few pages.

5           Q.   Is it your understanding that this is  
6           the same document that you have in your possession  
7           in some location?

8           A.   Before when you said, let the record  
9           show that it was the second amended, I don't know  
10          what that means. So, I don't know if it was --  
11          there's a first amended, I would guess, if there's  
12          a second. So I don't know whether the one I have  
13          is the first or second.

14          Q.   Fair enough. Is that your name in the  
15          caption?

16          A.   Yes, sir.

17          Q.   The copy that you have of the  
18          complaint, whether it's the first amended or  
19          second amended, did you show it to anyone?

20          A.   No. After I read it, I printed it, I  
21          put it in the manila folder, I put it in one of my  
22          backpacks. And a lot of other things have been  
23          going on in my life. I haven't gone back to it.

24          Q.   Do you train at Equinox?

25          A.   Yes, I do.

1                   Q. When I [sic] mean train, I mean, do you  
2                   yourself train?

3                   A. You mean, do I work out?

4                   Q. Yes.

5                   A. Yes, I work out there.

6                   Q. Do you have a regimen?

7                   A. Yes.

8                   Q. And do you work out with anyone?

9                   A. Generally, I work out on my own, but  
10                  there are times that I work out with some of my  
11                  trainers in a group workout as a fitness manager.  
12                  I arrange workouts, so I've worked out with some  
13                  of my trainers. I've worked out with my brother  
14                  when he comes, I work out with my wife.

15                  I generally work out on my own, but there  
16                  are times when I've worked out with other people.

17                  Q. Is your wife a member?

18                  A. No.

19                  Q. And is your brother a member?

20                  A. Yes.

21                  Q. And what is your brother's name?

22                  A. Joseph Maietta.

23                  Q. And does he work for Equinox?

24                  A. No.

25                  Q. And have you discussed this lawsuit

1 with him?

2 A. No.

3 Q. Have you ever worked out with Lawrence  
4 Sanders?

5 A. Yes. I used to train Lawrence Sanders.

6 Q. How frequently would you train Lawrence  
7 Sanders?

8 A. It was supposed to be twice a week of  
9 training. Very often, more often than not, it  
10 wasn't. Because of his duties there, there were  
11 whole weeks that he couldn't. There were times  
12 where he didn't have a package. But there were  
13 times where I had a program for him and I trained  
14 him as a trainer. I didn't work out in  
15 conjunction with him. I was training him.

16 Q. So you trained him as a personal  
17 trainer?

18 A. Yes.

19 Q. And do you train anybody now as a  
20 professional trainer?

21 A. Yes. I have about six or seven clients  
22 now.

23 Q. Who are your clients?

24 A. You want to know the names?

25 Q. Um-hum.

1 A. [REDACTED]

2 [REDACTED]

3

4 MR. McPARTLAND: Note for the record, I

5 believe with personal training clients'

6 names, we've had an agreement of

7 confidentiality, the way it's going to be

8 shared. They'll apply equally to this

9 list.

10 MR. HARMAN: I understand and agree.

11 Q. For what period of time were you

12 training Lawrence Sanders?

13 A. I trained him sporadically at the

14 Chelsea location. I was there for

15 three-and-a-half years. I didn't train him for

16 the entire three-and-a-half years. There were

17 just periods where we would train, and then I

18 trained him when I first came on to the Soho

19 location. He was looking for a trainer. He had

20 been training with somebody else, then -- he

21 bounces back and forth. He likes to train with a

22 few of the trainers every so often, and we

23 trained, I think, for about the first three,

24 four months that I was at the location in Soho.

25 Q. Was that during the time that

1 Ms. Ashdown was working at the Soho location?

2 A. Yes. And then he stopped training with  
3 me for a little bit. He worked on his own, and  
4 then he started training again with one of our  
5 trainers, Pagan Jordan, and he trained with her  
6 for all of 2012.

7 Q. Focusing on the time that -- in 2011,  
8 when Ms. Ashdown was the personal training  
9 manager, there was a time where you were regularly  
10 training Mr. Sanders; is that correct?

11 A. Yes. It was about -- it was probably a  
12 package or package and a half that we trained, I  
13 would say, during that time. Maybe we had about  
14 10 to 12 sessions. It wasn't as frequent as when  
15 it was in Chelsea.

16 Q. And during the sessions, did you  
17 discuss personal matters with him?

18 A. Most times, it was just sports. We  
19 would talk -- as far as personal matters, it was  
20 mostly sports. It was -- during my sessions, I  
21 don't really speak too much, especially when the  
22 client is actually involved in the movement. Just  
23 normally during the break periods.

24 And he -- I didn't give him any break  
25 periods. His goals didn't really allow for

1 extensive break periods, but we talked sports, we  
2 would talk about MMA, boxing, you know, just  
3 normal client-trainer chitchat. It was never one  
4 specific topic that --

5 Q. How about work-related topics; did you  
6 discuss work-related topics while you were  
7 training with him?

8 A. Yes. Maybe he would ask me about  
9 program compliance. He would ask me about how the  
10 new trainers that we hired are doing. You know,  
11 the role of the general manager is oversee all the  
12 departments, so he's always been very good at  
13 speaking with his managers about what is actually  
14 going on in your department.

15 Q. So you talk about work?

16 A. Yes. We talk about everything.

17 Q. Did you talk about Kerry Ashdown?

18 A. She came up in conversation. Most  
19 times, if we spoke -- and I don't know if they're  
20 exclusive to the sessions, but I would ask him,  
21 you know, how to handle certain conversations with  
22 her. You know, for advice on how maybe to speak  
23 to her and some of the tensions that were going on  
24 in the office.

25 But it has been like that for the



1           six years that I've been a manager. It's  
2           always -- you're able to speak with all the  
3           different people you work with. I mean, we have a  
4           manager's meeting every week.

5                   Q. You said that you spoke with Lawrence  
6           Sanders about how to handle Ms. Ashdown.

7                   So you were having problems handling  
8           Ms. Ashdown?

9                   A. No. If you want to say "handle" in  
10          that regard --

11                  Q. I'm using your words. I'm asking you,  
12          how --

13                  A. More along the lines of how to  
14          communicate with her.

15                  Q. So you didn't have a problem handling  
16          her?

17                  A. Handling is more -- what I mean by  
18          handling is, in our day-to-day interactions, how  
19          we would communicate, how I would get her to see  
20          my point of view on certain matters about the  
21          business. She has her point of view, I have my  
22          point of view, but we're both responsible for  
23          running the department. And us working as a  
24          cohesive pair is really something that's important  
25          to the success of a PT department.

1                   And I had very open lines of  
2                   communications with the PTMs that I worked with  
3                   before, so I would ask him for advice on either  
4                   how to open up those lines with Kerry, how to make  
5                   them more smooth.

6                   Q.   So there were times where she didn't  
7                   see your point of view; yes or no?

8                   A.   There were frequent times where she  
9                   didn't see my point of view.

10                  Q.   When you say "frequent," do you mean  
11                  every day?

12                  A.   Every week.

13                  Q.   And did you ever tell anyone that  
14                  Ms. Ashdown drank excessively at work?

15                  A.   I never told anyone that she drank at  
16                  work.

17                  Q.   Did you ever tell anyone that she drank  
18                  with her staff? Did you ever tell anyone that she  
19                  was getting drunk with her staff?

20                  MR. McPARTLAND:  Objection to the form.  
21                  There's two questions there.

22                  Q.   Can you answer?

23                  A.   You want to repeat the question?

24                  MR. HARMAN:  She can read it back.

25                  (Record was read back.)

1 MR. McPARTLAND: Which question is the  
2 real one?

3 MR. HARMAN: The second.

4 A. I never used the word "drunk." I did  
5 speak to Lawrence that trainers had come up to me,  
6 that at a few social functions, that she was  
7 drinking with them.

8 Q. What do you mean by "drinking"?

9 A. Alcoholic beverages.

10 Q. So you told Sanders that Ashdown was  
11 drinking with trainers?

12 A. Yes. We have a managers' meeting once  
13 a week, and Lawrence also, for all his managers.  
14 He has manager 101s. So he calls you into the  
15 office, you speak about how the department is  
16 going from your point of view, how are you doing  
17 on a personal level, how are you feeling. Just  
18 anything that's going on.

19 So part of my asking him for advice, I  
20 said, "Some of the trainers are giving me  
21 feedback, that she's a little close with some of  
22 them, and there have been times when she goes out  
23 and drinks with them."

24 Q. You oversee 37 trainers; right?

25 A. Currently, yes.

1 Q. I would imagine some of them drink;  
2 right?

3 A. Yes.

4 Q. I would imagine some of them drink  
5 together; right?

6 A. Yes.

7 Q. Have you ever had a beer with one of  
8 your trainers?

9 A. Yes.

10 Q. Did you ever complain to Sanders that  
11 Ms. Ashdown favored males over females?

12 A. I didn't complain to him. I told him  
13 it was around the time that me and her were  
14 discussing certain things, and she said she was  
15 hearing from the staff that I favor the females,  
16 and I said, you know, they're coming to me saying  
17 that she's favoring the male trainers because  
18 she's training with one of them, she's close with  
19 another.

20 Q. Who told you that?

21 A. Who told me she was close? A few of my  
22 female trainers at the time. One of them was  
23 Danielle Vetrano, another one is Nicole Hummel. I  
24 think those are the only two.

25 Q. Did you believe that Ms. Ashdown was

1 favoring males over females?

2 A. No. It's just -- just like I didn't  
3 believe that I was favoring females, one of the  
4 things that we deal with as managers, is there's  
5 always going to be this perceived favoritism, and  
6 it's our job to make them all feel equally  
7 represented by the department, especially us. So  
8 it is a challenge.

9 Q. Did you ever tell Sanders that  
10 Ashdown -- Ms. Ashdown wasn't responding to your  
11 e-mails?

12 A. Yes. Once I had -- it was a closeout  
13 period, and --

14 Q. So you did?

15 A. Yes.

16 Q. And have you ever set up a fake e-mail  
17 address at Equinox?

18 A. No.

19 Q. And did you speak to Ms. Ashdown  
20 directly about her not, according to you,  
21 responding to e-mails?

22 A. We spoke about it in the office, I  
23 think, after that event.

24 Q. But you went to Sanders first; right?

25 A. No. It was during a closeout period of

1 time.

2 Q. Well, just, let's --

3 A. I would like to answer the question for  
4 you.

5 Q. I want you to answer the question.

6 MR. McPARTLAND: "No" is good enough.  
7 That's what he's looking for.

8 Q. Did you speak with Ms. Ashdown prior to  
9 your complaint to Mr. Sanders?

10 MR. McPARTLAND: Object to the form.

11 A. I didn't complain to Lawrence, but I  
12 spoke to Lawrence before.

13 Q. You spoke to Lawrence. We established  
14 that. You spoke to Lawrence about your belief  
15 that Ms. Ashdown didn't respond to your e-mail.  
16 Okay. We've established that. That's correct.  
17 We understand that.

18 Is that correct?

19 A. I spoke to him because I wanted to get  
20 in touch with Kerry in response to my e-mail.

21 Q. But you couldn't text her?

22 A. No. I was e-mailing her.

23 Q. Did you have her phone number?

24 A. I did.

25 Q. You could text her; right?

1 A. I could have texted her, right.

2 Q. But you chose not to; right?

3 A. I don't know when I received her phone  
4 number in relation to her e-mail address.

5 Q. You don't recall texting her, do you?

6 A. I believe I texted her, but I didn't  
7 text her --

8 Q. Did you text her at that time?

9 MR. MCPARTLAND: I'm going to object.  
10 Can you let him finish as well, instead of  
11 talking over each other?

12 A. What I do with -- deal with business, I  
13 always -- like I told you earlier, I go through  
14 e-mail.

15 Q. But this was another manager at the  
16 Soho location; right?

17 A. Who was another?

18 Q. Ms. Ashdown.

19 A. Kerry?

20 Q. Yes. And you could have texted her;  
21 right?

22 A. What I did instead was I called. I  
23 called, asking for Kerry. I called the front desk  
24 and I said, "Is Kerry in the office," and they  
25 said, "No, Kerry is not in the PT office." I

1           said, "Okay, then let me talk to Lawrence," and  
2           they transferred me to Lawrence's office.

3                       It just so happened that Kerry was in  
4           Lawrence's office, and I said, "Hey, is Kerry at  
5           work today? I sent her an e-mail about some" -- I  
6           don't remember what it was related to in the  
7           business, "but I want to make sure it went  
8           through. I'm not getting a response."

9                       And that's how --

10                      Q. What did Sanders say in response to  
11           that?

12                      A. He said -- I think he told me that  
13           Kerry was actually in the room, and that she would  
14           check the e-mails. What I did was I told him the  
15           nature of it. I believe it was just a member  
16           wanted to purchase a package, so he relayed the  
17           information and the package was purchased and  
18           everything was fine.

19                      Q. And for how long a period did you  
20           believe that Ms. Ashdown wasn't responding to your  
21           e-mails?

22                      A. It was just that day. It was during  
23           one of the -- I think it was probably the last day  
24           of closeout in the month. Closeout is the final  
25           four days of the month where we're -- really



1           buckle down for budgets. In the PT department, we  
2           alternate the days. So I was there on the day  
3           before, she was here on this last day, and I sent  
4           her an e-mail about it in the morning. I didn't  
5           get a response in the afternoon. I believe I sent  
6           another one, and I wanted to make sure we got a  
7           process, so I called Equinox looking for her, but  
8           she wasn't in the office. She was in Lawrence's  
9           office.

10                   Q. So your testimony is that you sent her  
11           several e-mails and she didn't respond to them?

12                   A. Not several. Just, probably, two.

13                   Q. Two.

14       REQ                   MR. HARMAN: We're going to call for  
15           production of the e-mails that were sent to Kerry  
16           Ashdown that the witness claims he didn't get a  
17           response to.

18                   MR. McPARTLAND: I take that under  
19           advisement.

20                   Q. Was there any other time that  
21           Ms. Ashdown, according to your recollection,  
22           didn't respond to e-mails?

23                   A. Not that I remember.

24                   Q. Did you ever tell Mr. Sanders that you  
25           thought that Ms. Ashdown would crash and burn?

1 A. No.

2 Q. Did you ever tell Mr. Sanders that  
3 Ms. Ashdown wasn't doing her job?

4 A. No.

5 Q. Did you ever tell Mr. Sanders  
6 Ms. Ashdown didn't look well?

7 A. No. When she didn't look well, I would  
8 turn to her, because she would sit right next to  
9 me, and I would tell her, I would say, "Listen,  
10 why don't you leave early, I'll be here."

11 Q. Did you ever tell Mr. Sanders that,  
12 though?

13 A. No.

14 Q. Did you ever tell anybody, other than  
15 Ms. Ashdown directly, that Ms. Ashdown didn't look  
16 well?

17 A. Well, when I would go home and I would  
18 talk to my wife, I would say, "I think her  
19 treatment is really affecting her. I could see it  
20 today." It's something that I'm very sensitive  
21 to.

22 Q. Other than your wife, did you talk with  
23 anyone else?

24 A. No.

25 Q. How about any of the trainers?

1 A. No. It's not their business to know.

2 Q. Did anyone ask you?

3 A. They would ask, and if they did ask, I  
4 would always say, "Speak to her about it," or "I  
5 don't know about the situation."

6 Q. Who asked you?

7 A. I don't know specifically. I was more  
8 answering if the trainers were to ask, and I know  
9 that would be my default answer. It's not their  
10 business to know what's going on with Kerry.

11 Q. Do you believe that Ms. Ashdown's  
12 cancer treatments affected her ability to perform  
13 her job duties?

14 A. No. I think they affected her  
15 physically, like I told you earlier.

16 Q. I'd like for you to just answer the  
17 question.

18 Do you believe that Ms. Ashdown's cancer  
19 treatments affected her ability to perform her job  
20 duties?

21 A. No.

22 Q. So do you believe that there were --  
23 from your professional opinion, that Ms. Ashdown  
24 had any performance issues?

25 MR. McPARTLAND: Objection --

1 A. Performance issues, as far as what?

2 MR. McPARTLAND: -- to form.

3 MR. HARMAN: I'm sorry. Is there  
4 something that you'd like to say?

5 MR. McPARTLAND: I just objected to the  
6 form. Do you want me to clarify it?

7 MR. HARMAN: No.

8 MR. McPARTLAND: Okay.

9 Q. You've worked at Equinox for  
10 five years; right?

11 A. Since November 2007.

12 Q. Six years?

13 A. Almost six, yes.

14 Q. And you've worked as a manager for  
15 about half that, a little more?

16 A. No. Probably about 90 percent of it.

17 Q. 90 percent of it you worked as a  
18 manager.

19 And you're now functioning in  
20 Ms. Ashdown's former position; correct?

21 A. That's correct.

22 Q. And you've been in lots of manager  
23 meetings; correct?

24 A. Yes.

25 Q. And you've had manager training;

1 correct?

2 A. Yes.

3 Q. Do you consider yourself a good  
4 manager?

5 A. Yes, I do.

6 Q. Are you as knowledgeable as you could  
7 be of Equinox's requirements of you as a personal  
8 training manager?

9 A. Say that one more time, please.

10 Q. Are you as knowledgeable as you could  
11 be of Equinox's requirements for you as a personal  
12 training manager?

13 A. On a day-to-day basis, absolutely. I  
14 always want to learn more on a daily basis. I  
15 think there's always something to learn.

16 Q. I'm talking about today, though. I'm  
17 not talking about the future.

18 Have you done everything you're supposed  
19 to do to learn your job?

20 A. Yes.

21 Q. Are you good at it?

22 A. Yes.

23 Q. Was Ms. Ashdown good at her job?

24 A. Yes.

25 Q. And did you ever identify any

1 performance issues with Ms. Ashdown?

2 A. Yes, I did.

3 Q. What were those?

4 A. Part of the job as the fitness manager  
5 is I'm involved with the brand. So sort of how  
6 our jobs break down is she's the business -- the  
7 personal training manager's business numbers, the  
8 fitness manager is brand. So what I'm responsible  
9 for is program design, program design compliance  
10 with the trainers.

11 So one of the things, when I came over to  
12 the Soho location, as a team, they weren't very  
13 programming compliant. We had a program  
14 compliance spreadsheet, and at the time when I  
15 first got there, I noticed that they were -- less  
16 than 20 percent of the staff was utilizing the  
17 programs correctly.

18 So one of my tasks coming in there was to  
19 make sure that more of the trainers were  
20 programming with the eventual goal of being at a  
21 hundred percent compliance. And one of the things  
22 that I noticed and made that job difficult is that  
23 Kerry didn't actually utilize programs with her  
24 training clients. They weren't visible when she's  
25 on the floor, which is a requirement of the

1           trainer.

2                       And they weren't -- they weren't in the  
3           share drive. They would be easily accessible.  
4           Like all the other trainers and managers need to  
5           have them on the share drive. So it made my  
6           ability to get trainer buy-in less effective  
7           because there could be easily something where they  
8           could say, "Well, why do I need the program if the  
9           personal training manager doesn't have the  
10          program?"

11                   Q. So did you complain about that?

12                   A. I didn't complain about it. I spoke to  
13          Lawrence in my one-on-one and said, "Hey, listen,  
14          you guys have me in here to improve our  
15          programming complaints. Kerry doesn't use  
16          programs, nor does she have them visible during  
17          the training sessions. It's something that I've  
18          told her that I can help her with, programming,  
19          because that's one of the things that I'm good at.  
20          She doesn't really want my help, so it's going to  
21          be difficult for me to improve the program  
22          compliance of the staff if she's not open to me  
23          assisting her with the programming or actually  
24          having programs with her clients."

25                   Q. Is it a requirement at Equinox that you

1 have programs visible on the floor?

2 A. Yes.

3 Q. Where is that? Is that written down  
4 somewhere?

5 A. I believe it's part of our EFTI  
6 curriculum. I don't know where it is written  
7 down, but it's something that we educate and tell  
8 the trainers when we hire them. We're -- part of  
9 the Equinox programming system is we program  
10 six weeks in advance on our programming template.  
11 And how the managers are coached and all the  
12 trainers are coached needs to be visible during  
13 the session.

14 In our complimentary services, we  
15 actually show the program to the training client  
16 when we first start training them. So after we  
17 meet for the Equifit assessment, where we meet for  
18 that first training session, what we're supposed  
19 to do as trainers at Equinox is show them the  
20 program, explain to them what they can expect in  
21 this fitness program.

22 Q. So if I went to an Equinox location,  
23 according to Equinox's policy, if I see a trainer,  
24 I should see them with some kind of piece of paper  
25 or something like that?



1           A. You will see them either with our  
2           branded, six-week program on a clipboard, either  
3           attached to a notebook, or very recently trainers  
4           have moved over to the digital version of the  
5           template, which you can find it on there, on the  
6           iPad or any other type of tablet. But it should  
7           always be present during the session.

8           Q. And if it's not, they're violating  
9           Equinox's policy, according to your testimony?

10          A. If it's not there, it's the job of  
11          either the fitness manager to either ask them why  
12          it's not there, ask to see their program, see what  
13          the reason is. It could be the trainer forgot it  
14          and they go get it during the rest period.

15          Q. And it's your testimony that  
16          Ms. Ashdown didn't use programs at all?

17          A. In the beginning of her tenure there,  
18          she didn't have programs visible during the  
19          sessions.

20          Q. How long a period would you consider to  
21          be the beginning?

22          A. I would say, at least the first  
23          two months. Then Lawrence is always very good  
24          about that in their one-on-one. He addressed it  
25          with her and said, "Hey, let me see your

1           programs." From that point forward, there were  
2           programs visible during sessions.

3                   Q. So she only didn't use programs in the  
4           very beginning?

5                   A. Yes.

6                   Q. But -- and she hadn't worked at Equinox  
7           prior to that first beginning period that you're  
8           talking about; correct?

9                   A. No. It's my understanding she was  
10          hired in the beginning of 2011. She used to work  
11          in the United Kingdom.

12                  Q. And then she started using programs  
13          after that beginning period?

14                  A. After Lawrence spoke with her about  
15          having programs during sessions, yes.

16                  Q. How do you know Lawrence spoke to her?

17                  A. He told me in his -- in our one-on-one  
18          that "I'll speak to Kerry about there being  
19          programs visible during the training sessions."

20                  Q. So he talked to you about his  
21          conversations with Ms. Ashdown?

22                  A. No. He told me what he would do in  
23          response to my conversation with him.

24                  Q. Did you ever bring any other concerns  
25          to Mr. Sanders about Ms. Ashdown?

1           A. No. The only concerns were the  
2           inability to communicate, something where we had a  
3           different opinion. She was often condescending.  
4           She would speak to me like I was a child, so I  
5           never was the -- the office is visible to the  
6           training floor. I never wanted us to get into a  
7           back-and-forth, and there was one specific  
8           occasion where she was yelling at me. I don't  
9           remember what the topic was, and I left the  
10          office.

11                 Then I went to Lawrence. I said, "You  
12          need to talk to Kerry. She's raising her voice to  
13          me, and I would rather not have the whole training  
14          staff see it."

15           Q. So it's your testimony that she yelled  
16          at you?

17           A. She has yelled at me, yes.

18           Q. Yell at you about what?

19           A. I don't remember the topics. It was us  
20          just -- disagreements we were having.

21           Q. And was she yelling at you in front of  
22          anybody?

23           A. You could say the whole gym floor  
24          because our window, behind us in the office -- our  
25          office is only about three-and-a-half feet wide,

1           and it's -- the whole gym floor can be seen right  
2           into our windows.

3                   Q.   So it's your testimony that she yelled  
4           at you in front of the whole gym floor?

5                   MR. McPARTLAND:   Objection.

6                   A.   She yelled at me in my office.   She was  
7           yelling at me, and we were visible from the gym  
8           floor.

9                   Q.   And so you went to Sanders and you said  
10          that Ashdown was yelling at you?

11                  A.   That's correct.

12                  Q.   What did he say?

13                  A.   He said, "I will speak with her."

14                  Q.   And did he?

15                  A.   I believe so.   I didn't see the  
16          conversation.

17                  Q.   What happened after that?   Did you go  
18          back to the office?

19                  A.   I went back to the office, and probably  
20          for the next week, we barely said a word to each  
21          other.   And there was a noticeable tension when  
22          you would come into the office.

23                  Q.   And do you recall what the dispute was  
24          about?

25                  A.   No, I do not.

1 Q. And you said she was condescending to  
2 you?

3 A. Yes.

4 Q. What do you mean by that?

5 A. I'm always looking to learn, I also  
6 like to teach. So in our beginning conversations,  
7 when she first started, she let me know a little  
8 bit about her background, what she would do in the  
9 UK. I definitely took it as something where I  
10 could learn how to manage business from a member's  
11 prospective well from her, because she definitely  
12 had a talent for that. She was very organized  
13 with how she had the trainers -- (cross talk)

14 Q. In what ways was she condescending to  
15 you?

16 A. I was trying to finish the question  
17 that you asked me. And I would respond with  
18 trying to give her some ways of -- like you said  
19 earlier, she had never worked at Equinox before,  
20 so I was trying to explain to her the brand. It  
21 was obvious when she came in that she didn't --  
22 she wanted to run it the way it was run in the UK.  
23 Every business is different, every even department  
24 within Equinox is different, different culture.

25 So when I would try to give my opinion or

1 my advice, she didn't really care to hear it, and  
2 that's when she would be condescending.

3 Q. So it's your testimony that she didn't  
4 want your advice?

5 A. I don't think she felt she could learn  
6 anything from me.

7 Q. So it's your testimony that you don't  
8 think that she felt that she could learn anything  
9 from you?

10 A. That's correct.

11 Q. And did she tell you that?

12 A. No. That's how I felt.

13 Q. And did you complain to Lawrence  
14 Sanders that she -- that you didn't think that she  
15 could learn anything from you?

16 A. In our one-on-one, I would say to him,  
17 you know, we're supposed to be working as a team,  
18 PTM and FMs are supposed to feed off of each  
19 other. I've had two very productive relationships  
20 with other PTMs in my tenure. And I said for us  
21 to turn around Soho like they're expecting us to  
22 turn around Soho, it's not going to work unless we  
23 work together.

24 Q. If you have a disagreement with  
25 Mr. Diaz over a work-related issue, who makes the

1 final decision about what to do?

2 A. I would make the final decision, but we  
3 always want to go after everything as a  
4 partnership. It's definitely something where I  
5 value his feedback and what his opinion would be.  
6 Unless it was grossly inaccurate, I would  
7 definitely take what he said into consideration.

8 Q. But you have the final decision?

9 A. Final decision, but we make it as a  
10 team. It's all relationships with PTMs and FMs.  
11 We work as a team.

12 Q. Were there other occasions where you  
13 allege that Ms. Ashdown yelled at you?

14 A. There were frequent times where she  
15 would raise her voice. In my opinion, when two  
16 people are working together, we should be speaking  
17 to each other like we're speaking right now. It  
18 should never -- in a business setting, especially  
19 one where it's so visible to all the members and  
20 trainers walking by, that it should never look  
21 like we're being verbally aggressive or animated.  
22 It should be a very professional demeanor whenever  
23 you're speaking in the office.

24 Q. So she was verbally aggressive with  
25 you?

1           A. Yes. The tone and the volume, there  
2           were times where -- were inappropriate for the  
3           situation.

4           Q. And you said "frequent." How  
5           frequently was she being verbally aggressive with  
6           you?

7           A. More than once. It was frequent in the  
8           workplace.

9           Q. You said "frequent." Does that mean  
10          once a week?

11          A. More than once is my answer.

12          Q. More than five?

13          A. I believe so.

14          Q. More than ten?

15          A. Where she raised her voice? Probably  
16          not more than ten where she was condescending,  
17          absolutely.

18          Q. So there is more than five, but not  
19          more than ten times that she was verbally  
20          aggressive with you. And then there was more than  
21          ten times where she was condescending toward you?

22          A. I would say almost every situation  
23          where we had a difference in opinion, she had a  
24          condescending tone in her voice.

25          Q. And did you ever call anyone in the HR



1 department about Ms. Ashdown?

2 A. I don't remember. I don't think I  
3 have.

4 Q. And did you e-mail anyone in the HR  
5 department about Ms. Ashdown?

6 A. No, I don't believe so.

7 Q. Has Mr. Sanders ever yelled at you?

8 A. No.

9 Q. And if Mr. Sanders yelled at you  
10 between five and ten times in front of others at  
11 Equinox, would you talk to someone about it?

12 A. Absolutely.

13 Q. Who would you talk to?

14 A. It would depend on which club we're at,  
15 who is superior -- I would talk to my wife first  
16 and see how she would -- "what do you think I  
17 should do," and then I would probably speak to my  
18 area personal training manager, Rich Velasquez.

19 Q. But you would speak to someone about  
20 it?

21 A. Absolutely.

22 Q. And did you speak to Mr. Sanders about  
23 all these instances of yelling with Ms. Ashdown?

24 A. In our one-on-ones, I would speak about  
25 the nature of our relationship in the PT office.

1 Q. Did you speak to Mr. Sanders about all  
2 these instances of yelling?

3 A. I wouldn't speak to him after every  
4 single instance, but once I felt like it was too  
5 much, there would be times where I would go speak  
6 to him in the one-on-one.

7 Q. So you did --

8 A. I wasn't the type that I would  
9 tattletale after every -- oh, she yelled at me.  
10 But after she would yell, it would be  
11 condescending and I would speak to her and say, "I  
12 don't appreciate the way you're speaking to me."  
13 And it wouldn't change. Then I would speak to  
14 Lawrence. I would address it with Kerry also,  
15 that I didn't like the way she spoke to me.

16 Q. Is it your testimony that you directly  
17 addressed it with Kerry and then you spoke to  
18 Mr. Sanders?

19 A. Absolutely. The first event we were  
20 talking about before, where she was yelling, was  
21 after I had spoken to her on another occasion.  
22 And I said, "Listen, there's no reason for us to  
23 be yelling. I don't appreciate the way you're  
24 speaking to me," and it didn't change.

25 And that day, when she was yelling,

1           that's when I left the office, because I didn't  
2           want to respond in kind. I wanted to keep even  
3           tone, so I left the office, because I felt that  
4           was appropriate, and went to Lawrence. I said,  
5           "She's yelling at me in the office. I need you to  
6           speak to her."

7                   Q. And did he report back to you after  
8           that?

9                   A. No. He didn't report back to me, but  
10          like I told you, for at least that week, it was  
11          pretty much a "hi" and "bye" with me and her. It  
12          was very, very tense in the office.

13                  Q. Did you ever observe Ms. Ashdown, as  
14          you say, allegedly yelling at anyone else?

15                  A. I never told you I saw her yelling at  
16          somebody else.

17                  Q. Well, I'm asking you, did you ever  
18          observe her yelling at anyone else?

19                  A. No.

20                  Q. Did you ever observe her being  
21          condescending to anyone else?

22                  A. There could be times in the office  
23          where something she could say to the trainer in  
24          relation to the business could be condescending  
25          but that would be about it.

1 MR. McPARTLAND: Let me interrupt.

2 (Recess taken)

3 MR. HARMAN: We're going to break now  
4 for lunch.

5 I'm going to remind the witness that  
6 you're still under oath and instruct you  
7 not to discuss your testimony with anybody  
8 during the break.

9 Do you understand that?

10 THE WITNESS: Okay. Can I check with  
11 my wife to let her know that I'm still  
12 here?

13 MR. HARMAN: Sure. I'm talking about  
14 the content and the substance of your  
15 testimony; not your whereabouts.

16  
17 (Luncheon recess taken at: 1:16 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (2:04 p.m.)

3 CONTINUED EXAMINATION

4 BY MR. HARMAN:

5 Q. Did you discuss your testimony while we  
6 were on lunch break today?

7 A. No.

8 Q. And is there any portion of the  
9 testimony that you gave earlier in the day that  
10 you want to change?

11 A. No.

12 Q. Is there any testimony that you  
13 provided earlier in the day that you believe to be  
14 inaccurate?

15 A. No.

16 Q. We had some discussions earlier about  
17 the computer that's in your office.

18 Did you ever, at any point, conduct a  
19 search of your computer for information regarding  
20 Ms. Ashdown?

21 A. Which computer; the one on the left or  
22 the one on the right?

23 Q. Let's talk about the computer that you  
24 had before it was changed by the IT department.

25 So I take it that you took over

1 Ms. Ashdown's computer; is that correct?

2 A. Yes. The way the office is set up, PTM  
3 is historically always set on left, the FM is  
4 always set on the right.

5 Q. After Ms. Ashdown's departure, isn't it  
6 true you were almost immediately placed in the  
7 interim position of personal training manager?

8 A. No. I just did both tasks for about  
9 two or three weeks, but I stayed on the computer  
10 on the right.

11 Q. And when did you move to the computer  
12 on the left?

13 A. Once they found the fitness manager to  
14 work with me at the location.

15 Q. That was about three weeks?

16 A. Yes. It was sometime in October.

17 Q. October 2011?

18 A. That's correct.

19 Q. And at any point after that -- and you  
20 started to use the same computer that Ms. Ashdown  
21 was using in October of 2011?

22 A. Yes. After they brought in someone to  
23 work, I moved to the computer on the left, that  
24 Kerry had used, yes.

25 Q. At any point after October 11th, did

1           you conduct any search for any information  
2           regarding Ms. Ashdown?

3           A.   No.

4           Q.   How about within the physical office  
5           itself; have you ever conducted a search for  
6           information regarding Ms. Ashdown?

7           A.   No.

8           Q.   I'm handing you what's been marked as  
9           Plaintiff's Exhibit 2. Please take a look at it.

10                   (Plaintiff's Exhibit 2, two-page  
11           document dated January 9th to Joseph  
12           Matarazzo from Walker G. Harman, Junior,  
13           was marked for identification.)

14           A.   (Witness reviews document.)

15                   MR. HARMAN: For the record, this is a  
16           two-page document dated January 9th to  
17           Joseph Matarazzo from Walker G. Harman,  
18           Junior.

19           Q.   Have you had an opportunity to read  
20           Plaintiff's Exhibit 2?

21           A.   Yes.

22           Q.   Do you recognize this document?

23           A.   No.

24           Q.   Have you ever seen this document  
25           before?

1 A. No.

2 Q. Do you have any understanding of what  
3 it means?

4 A. I believe it's your firm letting Joe  
5 Matarazzo know that Kerry Ashdown has brought a  
6 legal disagreement against Equinox.

7 Q. And as you sit here today, after having  
8 read it, is there any other purpose to the letter?

9 A. If I'm understanding correctly, it's  
10 preparing Equinox that there's a potential legal  
11 matter, and that anything in relation to the case  
12 should be retained as such.

13 Q. And do you see your name there in the  
14 Re line?

15 A. Yes.

16 Q. But you never received a copy of this  
17 letter?

18 A. No.

19 Q. And did you interview Mr. Diaz?

20 A. Yes, I did.

21 Q. And was he an internal hire?

22 A. Yes, he was.

23 Q. And was he at the Soho location?

24 A. No. He was in a midtown location. I  
25 don't remember if it was our Graybar location. He



1 was a manager in training.

2 Q. Did you interview anyone else?

3 A. We had just met with -- once the  
4 interview gets to my hands, it's less a matter of  
5 me picking the candidate. More of just making  
6 sure I vibed with the candidate. So he was pretty  
7 much our option, or the option the company had.  
8 And I met with him just to make sure -- he had,  
9 like, some of the answers to my questions. I  
10 thought he was a positive candidate, and that's  
11 pretty much my involvement as hiring.

12 Q. How many times did you meet with him  
13 before he was hired?

14 A. I believe it was two times.

15 Q. Did you train with him?

16 A. No.

17 Q. And what would have happened if you  
18 didn't vibe with him?

19 A. I guess -- I'm sure Lawrence and my  
20 area personal training manager, Rich, would have  
21 asked me why. I guess if there were tangible  
22 reasons, they would have looked for another  
23 candidate, or they would have tried to find ways  
24 for the match to work.

25 Q. And was there anybody else that you met

1 with that was a candidate for that position?

2 A. I don't believe so. I think people --  
3 like Lawrence and Rich were, I think, discussing  
4 other candidates, but Darwin was the only one  
5 brought to my attention.

6 Q. Do you remember any other candidates  
7 that were being discussed?

8 A. No.

9 Q. And can you tell me other supervisors  
10 that you had other than Mr. Sanders, other  
11 supervisors you've had at Equinox?

12 A. I've had -- currently, now, I have Jed  
13 Prisby, who's an assistant general manager; Jane  
14 Montoya, who's an assistant general manager;  
15 Lauren Buck, who's an assistant general manager;  
16 Michelle -- I can't remember her last name. She's  
17 an assistant general manager now, the general  
18 manager at a location in Chicago.

19 Morgan Zamorra, she was an AGM, and now  
20 she's a general manager at the Chelsea location.

21 Q. Anybody else?

22 A. There was another gentleman, but I  
23 can't remember his name. He was there earlier in  
24 my tenure. That's an assistant general manager.  
25 And then Nick Aliferis was an assistant general

1 manager, and then he became the general manager of  
2 Chelsea, and now he's the general manager of  
3 Columbus Circle.

4 Q. So these are managers that you've had  
5 during your time at Chelsea and Soho at Equinox?

6 A. Correct.

7 Q. And of these individuals that you  
8 named, were you supervised directly by any of  
9 them?

10 A. They're involved in our PT meetings.  
11 It's direct supervision. It's not as if I just  
12 answer to them. We kind of all work together as a  
13 team. It's not something where I would just speak  
14 to one of them. You know, I would speak to the  
15 AGMs, too, at bigger clubs, they have the same  
16 title, but they may be responsible for different  
17 duties. I may have to go to one for something  
18 involving towels, some involving equipment, it  
19 depends on the role and the nature of the  
20 question.

21 Q. Well, you would consider the  
22 personal -- you would consider yourself to be the  
23 direct supervisor of the personal trainers;  
24 correct?

25 A. That's correct.

1 Q. And would you consider Lawrence Sanders  
2 to be your direct supervisor?

3 A. Yes.

4 Q. Tell me other direct supervisors that  
5 you've had.

6 A. The people that I listed on that --

7 Q. All these individuals were your direct  
8 supervisors?

9 A. Yes. The AGMs work under the general  
10 managers, and they, on a more specific level, deal  
11 with things at the club level.

12 Q. Are you aware of any employee at  
13 Equinox ever being terminated for, allegedly,  
14 improperly pulling sessions?

15 A. Yes.

16 Q. Can you tell me who, please?

17 A. I know the Brooklyn personal training  
18 manager, I forget his name, I think it was -- I  
19 know the Brooklyn training personal training  
20 manager, and I had heard of another personal  
21 training manager, but I don't know which location  
22 and which name.

23 Q. When did you hear this, about the  
24 Brooklyn personal training manager?

25 A. I would say, it's sometime in 2012. I

1           didn't hear about it this year.

2                   Q.   And what did you hear?

3                   A.   That he was pulling sessions  
4           inappropriately for himself and for another  
5           trainer, and he was discovered and he was  
6           terminated.

7                   Q.   And did you hear anything else?

8                   A.   No.

9                   Q.   Who told you this?

10                  A.   I think I might have actually heard it  
11           from Darwin because Darwin used to know people at  
12           the Brooklyn Equinox, and then he has friends in  
13           some other locations.

14                  Q.   And then you recall another instance in  
15           which an employee was terminated for improper  
16           session pulling?

17                  A.   Yes. I remember hearing it. I don't  
18           remember the -- I don't know which location it  
19           was.

20                  Q.   You don't remember any specific  
21           details?

22                  A.   No, sir.

23                  Q.   What is your educational background?

24                  A.   I attended a four-year private  
25           university, Hofstra University. I have a BA in

1 biology and psychology.

2 Q. And beyond your combined bachelor's  
3 degree, do you have any other degrees?

4 A. No. I would like to go back to school,  
5 but I don't.

6 Q. What would you like to go back to  
7 school for?

8 A. I want to get a master's in sports  
9 nutrition.

10 Q. Do you hold any certificates?

11 A. What type of certificates?

12 Q. Any kind of certificates related to  
13 your job?

14 A. Yes. I have my national certification  
15 through the Aerobics Fitness Association of  
16 America, I'm TRX certified, Kettlebell certified.  
17 I was certified using the biker through Equinox,  
18 pre- and postnatal certified.

19 Q. Anything else?

20 A. That's all I can remember off the top  
21 of my head.

22 MR. HARMAN: I'm handing you what has  
23 been marked as Plaintiff's Exhibit 3.  
24 Please take a look at it.

25 (Plaintiff's Exhibit 3, Defendants'

1                   responses to initial discovery dated  
2                   June 17, 2013, was marked for  
3                   identification.)

4                   THE WITNESS: (Witness reviews  
5                   document.)

6                   MR. HARMAN: For the record, this is  
7                   Defendants' responses to initial discovery  
8                   protocols, with this matter's CIV number,  
9                   dated June 17, 2013.

10                  Q. Have you seen this document before?

11                  A. No, sir.

12                  Q. Do you know who David Harris is?

13                  A. Yes, I do.

14                  Q. Who is he?

15                  A. He's one of the heads of the personal  
16                  training department for Equinox.

17                  Q. And have you ever discussed Kerry  
18                  Ashdown with him?

19                  A. No.

20                  Q. And how about Elizabeth Minton; who is  
21                  she?

22                  A. She's, I think, senior director for  
23                  development for personal training for Equinox. I  
24                  don't know her exact title.

25                  Q. Have you ever discussed Kerry Ashdown

1 with Elizabeth Minton?

2 A. I have spoken with Liz about my  
3 relationship with Kerry while we were working  
4 together, and ways to improve it.

5 Q. What about -- we've talked about  
6 Lawrence Sanders.

7 This document is entitled, "Defendants'  
8 responses to initial discovery protocols." And  
9 with respect to 3, 3 is, "Identify person the  
10 defendant believes to have knowledge of facts  
11 concerning the claims or defenses at issue in this  
12 lawsuit and a brief description of that  
13 knowledge." And then "Defendants in this case,"  
14 and that includes you, "provided the following  
15 response." And there are individuals listed, and  
16 Lawrence Sanders is listed there.

17 And my question to you is, other than  
18 what we've already spoken about, do you have any  
19 specific knowledge about your interactions with  
20 Lawrence Sanders -- and I'm sorry about the  
21 convoluted question, but I think it will be clear.

22 Other than what you've already testified  
23 to, did you have any other interactions with  
24 Lawrence Sanders regarding Kerry Ashdown that you  
25 can think of?



1 A. No, sir.

2 Q. And do you know who Matthew Plotkin is?

3 A. Yes, I do.

4 Q. And have you ever had any decisions  
5 with -- and by "discussions," I mean, e-mail,  
6 text, phone, in person, with Matthew Plotkin  
7 regarding Ms. Ashdown?

8 A. No. After she was let go, he just said  
9 that he and Lawrence made the decision, and we  
10 moved on from there.

11 Q. And you're also identified here as  
12 having knowledge or information regarding  
13 Plaintiff's employment with Equinox, as well as  
14 other facts and circumstances related to the  
15 claims and defenses in this lawsuit.

16 Do you have any reason to disagree with  
17 that statement?

18 A. If this is saying that I was there  
19 during the time, that's all I would really say I  
20 know about. I wasn't involved in the decision nor  
21 do I know how they came to the decision or what  
22 the decision was actually made off of. I just  
23 know my relationship with Kerry while we worked  
24 together.

25 Q. Other than what you've testified to

1           today regarding Ms. Ashdown's employment with  
2           Equinox, do you have anything to add that you  
3           haven't already testified to, with respect to your  
4           knowledge regarding Ms. Ashdown's employment with  
5           Equinox?

6                       MR. MCPARTLAND: Note my objection to  
7                       form.

8           A. No.

9           Q. How about Matthew Herbert; do you know  
10          who he is?

11          A. Yes. I believe the head of -- or he  
12          works in the Human Resources department.

13          Q. Have you discussed Ms. Ashdown with  
14          him?

15          A. No.

16          Q. How about Joseph Matarazzo?

17          A. No, sir.

18          Q. Do you know who he is?

19          A. I know who he is. I thought you meant  
20          having discussions with him.

21          Q. Yes. Did you ever have discussions  
22          with him about Ms. Ashdown?

23          A. No, sir.

24          Q. Let's go back to Liz Minton.

25                       When is the first time that you had a

1 discussion with Ms. Minton regarding Ms. Ashdown?

2 A. I think it was around the time where I  
3 was speaking to Lawrence for advice. I think Liz  
4 was speaking to -- Kerry was speaking to Liz about  
5 advice on how to work on our relationship. I  
6 think after Liz and Kerry spoke, Liz reached out  
7 to me and said that Kerry and I should get  
8 together at an off-site location just to talk  
9 about my wants and desires, Kerry's wants and  
10 desires, in ways that we can meet and come up with  
11 a compromise and move forward.

12 Q. Did you refuse to meet with her  
13 off-site?

14 A. I didn't feel comfortable about meeting  
15 off-site. I wanted to have the meeting either in  
16 our office or somewhere in Equinox Soho. Just  
17 because in the past, in how she's spoken to me, I  
18 didn't want there to be any possible way or  
19 inference that anything less than positive or  
20 negative on my end came out.

21 So I expressed to Liz that I would rather  
22 meet with Kerry at the gym in our office on the  
23 mezzanine, and both Kerry and Liz said it would  
24 probably be best if we met at a neutral location.

25 Q. Where did you meet?

1           A. We met across the street from the gym  
2           at a delicatessen. It's a restaurant on the  
3           corner of Prince.

4           Q. Did she yell at you during that  
5           meeting?

6           A. No. The meeting was -- of course we  
7           were in a restaurant. I spoke for the majority in  
8           the beginning because Kerry gave me the floor. I  
9           spoke about ways for us to improve, just things  
10          that I felt slighted on or not involved in.

11          One of my main bones of contention was  
12          that there was a time where on my day off, she  
13          interviewed some training candidates and hired  
14          them without my knowledge or even me meeting them.  
15          When I came in to work that next day, she said,  
16          "Oh, by the way, your two new trainers you need to  
17          train, they start on Monday."

18          So I told her that -- in this meeting,  
19          that I wanted to be involved in things like that,  
20          that for us to -- for us to be successful in the  
21          department, we need to work together. I conceded  
22          a lot of -- I told her that we would speak more  
23          amongst ourselves. She agreed we should speak to  
24          each other when there was an issue, and she would  
25          try to work better on how she spoke to me.

1                   So she didn't yell during that time. But  
2                   the meeting felt as if we both spoke to each  
3                   other, and then from that meeting, I didn't really  
4                   see much of a change in our interactions.

5                   Q. But you took the reigns at the  
6                   beginning of the meeting?

7                   A. No, Kerry started it.

8                   Q. But --

9                   A. One of the things that Liz and Lawrence  
10                  told her is that as the personal training manager,  
11                  she needs to work the hardest to repair our  
12                  fractured relationship, so she started the lunch  
13                  by saying, you know, "Why don't you start and let  
14                  me know how you're feeling." So I started.

15                  It's not that I took the reigns. She had  
16                  asked me to start speaking, so I started speaking.

17                  Q. How do you know that Liz and Larry had  
18                  told her that?

19                  A. She had told me and said that, you  
20                  know, "I need to work towards doing this." And I  
21                  believe when I spoke to Liz on the phone, she said  
22                  that she had the personal training manager, so, go  
23                  to a neutral site, that's where she'd like to go,  
24                  allow her to take the lead on repairing the  
25                  relationship. And I said, "Okay." And I trust

1 Liz. I've known Liz since I've been employed, and  
2 that's why I felt okay with going to an off-site  
3 meeting spot.

4 Q. Where were you when Ms. Ashdown hired  
5 these trainers?

6 A. I was probably home. It was my day  
7 off.

8 Q. Hadn't you taken some time off during  
9 that period?

10 A. No. Not when these trainers were  
11 hired.

12 Q. You weren't on your honeymoon?

13 A. That was in April. If it was  
14 concurrent, I would imagine that I was around  
15 for -- the way we do an interview process is a  
16 phone screen in person.

17 Q. I'm not asking about the interview  
18 process. I'm asking you about whether you took a  
19 honeymoon or not.

20 A. The first question was where was I.

21 Q. All right. So you didn't know where  
22 you were, so I'm asking you if you took a  
23 honeymoon.

24 MR. MCPARTLAND: Over my objection.

25 A. My response to your question, that I

1 was home on my day off, and then as I was  
2 answering, you said, "Did you take a honeymoon?"

3 Yes, I took a honeymoon.

4 Q. How long did you take?

5 A. A week.

6 Q. How many personal trainers have you  
7 hired since Ms. Ashdown departed Equinox?

8 A. Over 20.

9 Q. And has Mr. Diaz been present at every  
10 single one of those interviews?

11 A. Diaz -- Darwin Diaz meets all the  
12 candidates before we hire them.

13 Q. I understand that's your testimony,  
14 that that's your policy. I'm asking you if he's  
15 been present at every single interview that you've  
16 conducted for personal trainers?

17 A. He's not been to every interview, but  
18 he meets them at one of our interview stages  
19 before the hiring process is complete.

20 Q. And that's the procedure and that's  
21 what you and Ms. Ashdown had utilized when you  
22 were working together as well; correct?

23 A. In this case, with these two trainers,  
24 we didn't utilize that procedure.

25 Q. And has Mr. Diaz ever taken vacation?

1 A. Yes.

2 Q. And has he ever taken any other types  
3 of leaves? Has he ever been ill?

4 A. I think since we've worked together, he  
5 has only taken one sick day.

6 Q. But he's taken vacation?

7 A. He's on vacation now. This is his  
8 first vacation since we started.

9 Q. How long is that vacation for?

10 A. One week.

11 Q. I'm handing you what's been marked for  
12 identification as Plaintiff's Exhibit 4. Please  
13 take a look at it.

14 (Plaintiff's Exhibit 4, Defendants'  
15 responses to Plaintiff's first set of  
16 interrogatories dated June 10, 2013, was  
17 marked for identification.)

18 A. (Witness reviews document.)

19 MR. HARMAN: For the record, this is  
20 Defendants' responses to Plaintiff's first  
21 set of interrogatories. It's dated  
22 June 10, 2013.

23 A. To be honest with you, I'm reading it,  
24 but I don't understand it. I know science; I  
25 don't know legalese.



1                   Q. Okay. Do you recognize your name there  
2                   on the caption on the first page?

3                   A. Yes, sir.

4                   Q. And could you please turn your  
5                   attention to Interrogatory Number 16. And just so  
6                   that we are clear on what these are -- because I'm  
7                   not -- this is not an argument, nobody is trying  
8                   to trick anybody.

9                   To take the legalese out of it, these are  
10                  questions that have to be answered; right? So,  
11                  for instance, if you turn to Number 5 on Page 4.

12                 Number 5 on Page 4 says, "Identify each  
13                 and every person with knowledge or information  
14                 regarding Defendants' policies and/or procedures  
15                 concerning hostile work environment." And the  
16                 response there is "Equinox identifies Matthew  
17                 Herbert."

18                 So there are questions and there are  
19                 answers. If you'll turn your attention to  
20                 Interrogatory 16, Interrogatory 16 states,  
21                 "Identify each and every person who, in any  
22                 manner, participated in the answers of these  
23                 interrogatories." And the response is "Equinox  
24                 identifies Patrick McPartland, Lawrence Rosen,  
25                 Lawrence Sanders, Elizabeth Minton, Matthew

1 Plotkin, Joseph Matarazzo and Matthew Herbert."

2 Is it an accurate statement that you did  
3 not provide any information in response to any of  
4 these interrogatories?

5 MR. MCPARTLAND: Object to the form.

6 You can answer.

7 A. I don't know what the questions are.

8 Q. Well, you don't see your name there;  
9 right?

10 A. That's correct.

11 Q. And do you have any reason to believe  
12 that that response provided by Equinox is  
13 inaccurate?

14 A. I don't understand the rest of these  
15 questions that need to be answered. So isn't that  
16 what I'm doing right now; I'm answering your  
17 questions?

18 Q. I'm asking you if you believe that --  
19 you're not identified as having provided any  
20 information in response to these interrogatories.

21 Do you believe that you did? Did anyone  
22 ever go over any interrogatory questions with you?

23 A. No.

24 Q. Okay. That's all I wanted to know.

25 It's not a trick question. I just wanted to know

1           whether --

2                   A.   Okay.

3                   Q.   I'm handing you what has been marked as  
4           Plaintiff's Exhibit 5. Please take a look at it.

5                           (Plaaintiff's Exhibit 5, Defendants'  
6           responses to Plaintiff's first request  
7           for the production of documents dated  
8           June 10, 2013, was marked for  
9           identification.)

10                  Q.   You don't need to read the entire  
11           document. It's similar in its nature in that it's  
12           in legal format, and it contains a lot of  
13           legalese, but I'll explain to you -- I just have a  
14           few questions.

15                        So take a moment to generally peruse it.  
16           If you need further time to read it, you're  
17           certainly entitled to that, whatever time you  
18           need.

19                   A.   (Witness reviews document.)

20                        MR. HARMAN: For the record, this is  
21           Defendants' responses to Plaintiff's first  
22           request for the production of documents  
23           saying caption and CIV number is this  
24           action, and it's dated June 10, 2013.

25                   A.   I'm looking at it, but it's just words

1 on a page to me.

2 Q. Okay. Similar in nature, these are  
3 requests that the plaintiff, Ms. Ashdown, made of  
4 defendants in this action, which include you. But  
5 where these are -- the previous exhibit,  
6 Plaintiff's 4, were requests for written  
7 responses, Plaintiff's 5 is a request for  
8 documents, which includes documents and  
9 information, which is anything, really.

10 So I'm going to ask you to turn your  
11 attention to Number 29 on Page 16. 29 states,  
12 "All communications, all documents, and all  
13 electronically-memorialized information sent to or  
14 from Defendant Maietta via text message concerning  
15 Plaintiff wherein Plaintiff is referenced. Such  
16 references include, but are not limited to,  
17 Plaintiff's first name, last name, full name,  
18 initials, nickname, or any variation of her name."

19 My question to you is, have you ever seen  
20 this before?

21 A. This response sheet?

22 Q. This question.

23 MR. MCPARTLAND: Object to the form.

24 A. I don't remember reading a document  
25 like this, no.

1 MR. HARMAN: Okay. Give me a few  
2 minutes. You can set that down for the  
3 court reporter. The exhibits with the  
4 green tabs go to the court reporter.

5 Give me a few minutes. I think I may be  
6 wrapping up. Give me a few minutes to  
7 review my notes.

8 (Recess taken)

9 MR. HARMAN: I don't have any further  
10 questions.

11 Mr. Maietta, unless you have anything to  
12 add to today's testimony -- there might be  
13 additional questions for you, but I'll take  
14 that up with your lawyer. There might be  
15 additional legal issues or questions, but  
16 I'll take it up with your lawyer, and you  
17 will certainly hear through him if there  
18 are any additional discovery issues that  
19 arise.

20 Thank you very much for your time.

21 THE WITNESS: Thank you.

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23 (Time noted 2:57 p.m.)

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I N D E X

WITNESS: Mauro Maietta

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3 I, MAURO MAIETTA, do hereby acknowledge I have

4 read and examined the foregoing pages of testimony,

5 and the same is a true, correct and complete

6 transcription of the testimony given by me, and any

7 changes or corrections, if any, appear in the

8 attached errata sheet signed by me.

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14 Date

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16 MAURO MAIETTA

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CERTIFICATE OF NOTARY PUBLIC

I, RENATE REID, the officer before whom the foregoing deposition was taken, do hereby certify that the witness, MAURO MAIETTA, whose testimony appears in the foregoing deposition, was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness;

That I am neither counsel for, related to, nor employed by and of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action. The witness will sign.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of September, 2013.

RENATE REID

Notary Public in and for

The State of New York